

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.262 OF 2021

Mo. Sameer Sagir Ahamad Pathan

..vs..

State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Band, Advocate for Applicant.

Shri I.J. Damle, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 02/07/2021

Hearing was conducted through Video Conferencing.

2. The applicant/accused came to be arrested by Kapil Nagar Police Station, District Nagpur in Crime No.445 of 2020 for the offence punishable under Section 302 read with 34 of the Indian Penal Code. The applicant primarily claimed bail by stating that initially, there were involvement of two accused. However, later on, the applicant has been falsely implicated in the case. It is argued that besides the material of last scene theory, there is nothing against the applicant/accused. It is pointed out that C.A. report also does not disclose blood stains on the cloths of the applicant/accused. The State resisted bail by filing reply-affidavit and contending the prosecution story in brief. It is stated that the applicant along with

main accused Tushar Gajbhiye in furtherance of their common intention, abducted the deceased Golu Rajput and brutally murdered him. According to the prosecution, there are two eye-witnesses, who have seen the applicant while taking away the deceased at relevant time. Learned A.P.P. has argued that there are several injuries on the person of the deceased, which shows that the act was committed by more than one assailant.

3. At the instance of report lodged by the Police Constable Rahul, the Crime came to be registered. The informant stated that the main accused namely Tushar has telephonically confessed that he had committed murder of Golu Rajput. On receipt of said information, they went to the place, wherein main accused Tushar disclosed that he along with another co-accused Premchand @ Tony Marotkar took the deceased on his motorcycle at secluded place and committed murder by means of inflicting knife blows. At the instance of Tushar and Tony, knives came to be seized.

4. True, there are two statement of witnesses namely Kunal @ Lucky Waghmare and Aakash Khandekar who speaks that soon prior to the occurrence, they have seen the applicant along with the deceased leaving the place by red colored car. Learned Counsel appearing for the applicant would

submit that, statements of these two witnesses are belatedly recorded, in which the applicant has been falsely implicated. He has also pointed towards disclosed statements of co-accused who have not stated about the presence of the applicant. Certainly the said portion is inadmissible for all purpose and therefore, it cannot be taken into account. The C.A. report has produced on record, which indicate that no blood stains were found on the cloths of the applicant.

5. Learned A.P.P. pointed that blood stains were found in red colored car by which the applicant was traveling. However, the said material would connect with the applicant, if the last scene theory is accepted. It is a matter of trial to establish that the applicant also accompanied deceased in the car. Besides that there is no other material. It is brought to the notice that, there was only one previous offence against the applicant registered in the year 2016.

6. Having regard to the nature of material collected against the applicant, after filing of charge-sheet, he can be released on bail by imposing stringent condition. Hence, the following order :

(a) The Criminal Application is allowed and disposed of.

(b) The Applicant/accused Mo. Sameer Sagir

Ahamad Pathan be released on bail in connection with the Crime No.445 of 2020 registered at Kapil Nagar Police Station, District Nagpur for the offence punishable under Section 302 read with 34 of the Indian Penal Code, on his furnishing P.R. bond in the sum of Rs.15,000/- with one surety in the like amount.

- (c) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (d) The applicant/accused shall not enter into the territorial limits of the Nagpur Municipal Corporation, till the conclusion of trial.
- (e) The Applicant/accused shall provide his residential address and cell number to the concerned Investigating Officer where he intend to reside, within one week from his release.
- (f) The above observations are restricted to the aspect of deciding this bail application, which has no impact on the merits of the trial.

JUDGE