

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 398/2021.

Balu Laxman Bhakre and another.

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.R. Deshpande, Advocate for Applicants.
Shri H.D. Dubey, APP for the Non-applicant.

CORAM : VINAY JOSHI, J.

RESERVED FOR ORDER ON : 21.06.2021

ORDER PRONOUNCED ON : 22.06.2021

Hearing was conducted through Video Conferencing.

2. Police of Balapur Police Station, District Akola have arrested applicants in connection with Crime No.495/2019 for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code. Besides usual grounds, applicants have claimed bail on the premise of inadequacy of material against them.

3. The State has resisted bail by filing reply affidavit. It is contended that applicants

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along with co-accused Rukhmini have committed murder of Mangesh [husband of Rukhmini] in a pre-planned manner. Not only they committed murder, but, also buried the dead body in streamlet to screen the offence.

4. On 25.12.2019, on information the police went to the spot i.e. to the streamlet, from where halfly decomposed dead body of an unknown person was found. On the basis of diary and aadhar card found on the person of the deceased, his identity was established as Mangesh Subhash Bunde. During investigation, it was found that the co-accused Rukhmini [wife of the deceased], had frequent calls on the mobile of applicant no.1 Balu. Taking a clue from the said fact, the police thoroughly investigated the matter and found that Rukhmini was having illicit relations with applicant no.1 Balu. Both of them have decided to marry, however, as the deceased was a hurdle, they decided to eliminate him. Applicant no.2 Mohan was friend of Balu, who

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allegedly assisted both of them in executing the plan. On 12.12.2019 all three took the deceased in the forest under the pretext of having meals. All of them consumed liquor and then Mangesh was done to death by strangulation and his body was buried in forest itself.

5. This case is totally based on circumstantial evidence. Mangesh was allegedly killed soon after 12.12.2019, however, after 12 days his decomposed body was traced. On arrest, applicant no.1 Balu made a disclosure statement. At his instance police have seized a spade used to bury the dead body. Besides that, at his instance 5 empty liquor bottles were found at the said place. These articles were seized by drawing a panchnama. Post mortem note discloses that a decomposed body was found. The cause of death is by “compression of neck”, hence, a case of strangulation.

6. The prosecution has strongly relied on the CDR relating to mobile phone of the applicant

no.1 Balu and co-accused Rukhmini. As per prosecution case deceased Mangesh went missing on 12.12.2019. CDR of applicant no.1 Balu discloses that he had frequent conversation with co-accused Rukhmini on 12.12.2019 and 13.12.2019. Particularly on 12.12.2019 till 11.54 a.m. there were 16 calls, then continuously on 13.12.2019 from 1.31 p.m. till next day, there were 15 calls. Prima facie it shows that on crucial time i.e. after missing of Mangesh, they were in constant contact with each other. The said material certainly supports the prosecution case, unless otherwise explained. Thus, there appears to be prima facie case against the applicant no.1 about his complicity in the crime.

As regards to applicant no.2 Mohan is concerned, besides seizure of motor cycle, there is nothing to show his positive role. The nexus of motor cycle with crime is not so convincing, since motor cycle is a common vehicle of use. As compared with Balu, there are no frequent calls

from the mobile phone of Mohan.

7. Having regard to the above circumstances and considering the role of each of them, applicant no.1 Balu is not entitled to bail. However, applicant no.2 Mohan can be released on bail by imposing certain conditions. Hence, the following order.

- (i) Criminal Application is partly allowed and disposed of.
- (ii) Criminal Application as regards applicant no.1 – Balu Laxman Bhakre is concerned, the same stands rejected.
- (iii) Applicant No.2 Mohan Bhagwat Giri is released on bail in connection with Crime No.495/2019 registered with the non-applicant - Balapur Police Station, District Akola for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, on his furnishing P.R. bond in the sum of Rs.25,000/- with one or two sureties in

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the like amount.

- (iv) The Applicant no.2 – Mohan Giri, 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.
- (v) Misc. Applications, if any, also stands disposed of.

JUDGE

Rgd.