

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

CRIMINAL APPLICATION (BA) 671 OF 2021

(Yogendra @ Chotu Gajanan Khade..vs..State, thr PSO, PS Paratwada, Dist. Amravati)

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

Court's or Judge's orders.

Mr. M.N. Ali, counsel for applicant.
Mr. M.K. Pathan, APP for non-applicant/State.

CORAM: ROHIT B. DEO, J.
DATE:20.08.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 428/2020, registered with Police Station Paratwada, Amravati, for offences punishable under sections 302, 201 read with section 34 of Indian Penal Code ("IPC")

3. The case of the prosecution is that the applicant and co-accused Raju Bihari came to the house of the deceased Mr. Suraj, and under the pretext of ensuring that the labour payment due to deceased shall be paid, took the deceased alongwith them in the evening hours on 23.10.2020.

4. At 10.00 p.m., the applicant and co-accused Raju Bihari returned without Mr. Suraj. The accused told the informant that all the three went to a liquor shop and on the way back Mr. Suraj accompanied one person who came on a motorcycle.

5. Since the deceased did not return home on the next day, a search was undertaken and the body was discovered in the river bed near Raja Shiwaji College.

6. This Court (Coram: Shri Vinay Joshi, J.) was pleased to reject the application seeking bail, preferred by co-accused observing that there is sufficient evidence on record, albeit circumstantial in nature, to connect the accused with the crime.

7. In view of the settled law, that there cannot be a parity in rejection of bail, I have duly considered the material on record, and having done so, I am satisfied that the applicant is not entitled to bail.

8. The applicant is already facing prosecution under section 307 of IPC.

9. The motive for the crime is the statement given by the father of the deceased which implicates the applicant in the crime registered earlier under section 307 IPC.

10. The last seen theory which is invoked by the prosecution is substantiated by consistent versions of witnesses.

11. The injury which is suffered by the applicant is consistent with the use of blade to cause death, which is the case of the prosecution.

12. Mr. M.N. Ali, the learned counsel made a serious effort to persuade me to hold that the last seen theory has no application to the facts. Mr. M.N. Ali points out that the post mortem conducted between 12.00 and 1.00 p.m. on 25.10.2020 states that the death occurred within 36 hours.

The submission is that if the post mortem report is taken at face value, then the death occurred after the accused returned home without Mr. Suraj.

13. At the stage of deciding entitlement to bail, a minute examination of the material on record is not expected from the Court. However, in view of the submissions canvased, I am impelled to observe that there is more than ample material on record to prima facie bring into play the last seen theory. The approximate time of death mentioned in the post mortem report is not an inflexible or inexorable time. Even if it is assumed, that going by the timeline, which in any event is approximate, there is a gap of 2 hours or 4 hours, at this stage, it would be difficult to hold that the last seen theory has no relevance.

14. Even *de hors* the last seen theory, there is enough circumstantial evidence on record in the form of an injury suffered consistent with use of blade, which is the weapon of offence, which the accused will have to explain

during the course of trial.

15. Considering the material on record and the fact that the applicant is already facing prosecution for an extremely serious offence, to wit section 307 IPC, no case is made out for grant of bail.

16. The application is dismissed.

Judge

Belkhede