

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

CRIMINAL APPLICATION (BA) NO.1023 OF 2021

(Santosh s/o Gajanan Dakhore Vs. State of Maharashtra thr. PSO PS Janefal, Dist.
Buldhana)

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

Court's or Judge's orders.

Mr. M. L. Vairagade, Advocate for Applicant.
Mr. M. K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.
DATE: 22nd NOVEMBER, 2021.

The applicant is seeking bail in connection with Crime 185/2019 registered with the Police Station Janefal, District Buldhana for offences punishable under Sections 302 and 498-A of the Indian Penal Code.

2. The prosecution case is that on 14.08.2019 between 01:30 p.m. to 02:00 p.m., the applicant murdered his wife Kalpana by assaulting her on the head with an axe. The motive which is alleged appears to be marital discord. The applicant allegedly suspected the character of the deceased and conveyed as such to the relatives of the deceased including her younger sister Anita.

3. The submission of the learned counsel for the applicant is two fold. The first submission is that apart from the alleged recovery of the axe pursuant to the memorandum under Section 27 of the Indian Evidence Act,

there is no incriminating material to link the applicant with the homicidal death. The other submission is that considering that the applicant is in custody since last two years, he is entitled to bail in view of the likelihood that the trial may be delayed.

4. The learned APP Mr. Pathan is opposing the application vehemently. Mr. Pathan would submit that the discovery is not the only incriminating material, as is submitted. Mr. Pathan would further submit that considering the serious nature of the crime and the punishment which conviction may entail, the fact that the applicant is in custody since two years is not *per se* decisive. It is further submitted that at this stage, there is no reason to assume that the trial shall be unduly prolonged.

5. I have scrutinized the material in the charge-sheet with the assistance of the learned counsel for the applicant and the learned APP, and having done so, I am satisfied that the applicant is not entitled to bail.

6. The first incriminating material is motive. The statements recorded during the investigation reveal that the deceased was ill-treated and her character was maligned. The younger sister of the deceased has stated that the applicant called her and conveyed that the deceased was of dubious character and that she has had extra marital relationship with several persons. The next incriminating material is that the murder appears to have occurred

between 01:30 p.m. to 02:00 p.m. The murder occurred in the agricultural field of the applicant. Witnesses have seen the applicant going to the field at 01:30 p.m. The deceased was already working in the field from 11:00 a.m. It is at 02:00 p.m. that the applicant allegedly ran towards his parents who were working in the nearby field and declared that his wife had been murdered. While it would be open for the accused to explain the circumstances in which his wife was killed, during the course of the trial, at this stage, the circumstance is certainly incriminating and forms a vital part of the chain of evidence. The third circumstances on which the prosecution is relying is the recovery of the axe. While the learned counsel for the applicant submits that the axe was recovered from a public place, and therefore, the recovery is of no relevance, an object of weapon, if hidden in a public place, the recovery thereof would certainly be relevant. What is decisive is not whether the place from which the weapon is recovered is a public place or otherwise. What is decisive is whether the weapon was hidden or kept in such a manner as would give rise to a reasonable inference that the location thereof would be known only to the accused. I note from the memorandum under Section 27 of the Indian Evidence Act and the *panchnama* that the weapon was hidden in a bush in the agricultural field of the applicant. It is further submitted that the weapon did not have blood stains. The report of the chemical analyzer is awaited, is the statement of the learned APP Mr. Pathan. It is further submitted that by Mr. Pathan that the disclosure statement reveals that after inflicting the

blows the applicant washed of the blood stains, and therefore, the prosecution has invoked the penal provisions of Section 201 of the IPC.

7. The probative value, and indeed admissibility of the portion of the disclosure statement, would be an aspect to be addressed by the trial Judge. However, at this stage, I am satisfied that there is sufficient incriminating material on record to *prima facie* connect the applicant with the crime.

8. Considering that the offence is grave, the punishment could be capital if the applicant is convicted, most of the witnesses are closely connected with the applicant and indeed the mother of the applicant would be a material witness, and the over all circumstances, I am not inclined to exercise discretion in favour of the applicant.

9. It may be noted that the earlier bail application was heard and decided by this Court (Coram: V. M. Deshpande, J.) vide order dated 07.02.2020 in Criminal Application (BA) 59/2020. The previous application was dismissed by an elaborate and reasoned order. The applicant then preferred another application for bail suppressing the rejection of the first application. The second application was as such dismissed. The applicant approached the Hon'ble Supreme Court and was permitted to approach this Court afresh after making the appropriate disclosures. While the applicant has disclosed the rejection of the earlier

application, in deference to the directions of the Hon'ble Supreme Court, no change in circumstances as such is demonstrated.

10. Be that as it may, apart from the fact that there is absolutely no change in circumstances which is pressed in service as would warrant a second look at the entitlement to bail, even after considering the entitlement afresh, the application deserves dismissal.

11. The application is dismissed.

JUDGE

NSN