

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

Criminal Application (BA) No. 1055 of 2021

(Bhagwan S/o Deorao Dokarimare ..vs.. State of Maharashtra, through P.S.O., Ramtek,
District Nagpur)

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

Court's or Judge's orders

Mr. P. A. Paripawar, Advocate for the applicant
Mr. N. S. Rao, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 20-10-2021

The applicant is seeking bail in connection with Crime 11/2020 registered with Police Station, Ramtek, District Nagpur for offences punishable under Sections 302, 201 and 120B read with Section 34 of the Indian Penal Code.

2. There are as many as five accused who are arraigned and the applicant is projected to be the main accused.

3. The prosecution case is that Ashok Wadibhasme, the owner of the agricultural field which the applicant cultivated on contract (*batai*), was strangled to death by the applicant and co-accused and with the assistance

of the other accused, the body was buried under a pit dug by the accused Gopichand.

4. The motive, which is alleged, is monetary dispute touching the terms of the contract of cultivation. Learned Additional Public Prosecutor Mr. Rao points out two circumstances which according to him establish such chain as would be sufficient to reject bail. The first circumstance is that the owner of the neighbouring field states that he saw the applicant, the deceased and another co-accused at the agricultural field in the morning hours of 6-1-2020. Other circumstance is that according to the prosecution, the place where the body was hidden was discovered pursuant to the statement of the applicant under Section 27 of the Indian Evidence Act.

5. It is not in dispute that there is no eye witness and that the case of the prosecution rests on circumstantial evidence. Insofar as the last seen theory is concerned, the fact that the deceased and the two accused were seen together on 6-1-2020 may not be necessarily relevant.

The time of the death is not clear. There is nothing unnatural about the deceased and the applicant being seen at the agricultural field together since the applicant was cultivating the said field which was owned by the deceased, *albeit*, on contract basis. Insofar as the discovery of the place where the body was hidden, the learned counsel for the applicant points out that the discovery will have to be taken with a pinch of salt since the statement of witness Roshan Wadibhasme shows that the pit/place where the deceased was buried was already disclosed by accused Gopichand to the witness and that in every probability, the police were already aware of the place of the burial of the body when the Section 27 statement of the applicant was recorded. While it would not be necessary to make any definite observation on the said submission, the submission cannot be brushed under the carpet and will have to be considered by the trial Court on the basis of evidence adduced.

6. Accused 3 whose role, according to the prosecution, is similar, is granted bail and so are the other accused. In this view of the matter, a case for bail

is made out since the applicant has otherwise no criminal antecedent and is not likely to be a flight risk.

7. The application is allowed.

8. The applicant be released on bail on furnishing PR bond of ₹ 16,000/- (Rupees Sixteen Thousand) with solvent surety of like amount subject to the following conditions.

(a) The applicant shall not tamper with the evidence or make any attempt to influence the witnesses, directly or indirectly.

(b) The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE

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