

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

CRIMINAL APPLICATION (BA) 1279 OF 2021

(Nikhil @ Nikya s/o. Prabhakar Rao Dhoble..vs.. State, thr PSO Alipur, Dist. Wardha)

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

Court's or Judge's orders.

Mr. Mahesh Rai, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.
DATE:18.12.2021.

Heard.

2. The applicant and co-accused Sudhir @ Chetan Dhoble are implicated in Crime 186/2020, registered with Police Station Alipur, District Wardha, for offences punishable under sections 302, 201 read with section 34 of Indian Penal Code.

3. The allegation is that the accused, acting with common intention, murdered Mr. Dipak Fulzele at the agricultural field of Mr. Pramod Mahajan by first assaulting him with stones and strangulating him.

4. In brief, the prosecution case is that the wife of the applicant was residing at her parental house at village

Sonegaon, Tahsil-Deoli, District-Wardha. On 26-10-2020 the brother of the deceased Mr. Ashish accompanied the accused to village Sonegaon. While the applicant halted there, Mr. Ashish and the co-accused returned to their village. On the next day, on the pretext that the applicant is extremely drunk, the co-accused persuaded the deceased to accompany him to village Sonegaon. There is material on record to indicate that at 7-45 p.m. or thereabout the applicant, the deceased and the co-accused left the parental home of the applicant's wife on a motorcycle. The body of the deceased is discovered on 28-10-2020.

5. I have released the co-accused Sudhir @ Chetan on bail vide order dated 16.11.2021, recording thus:

"6. I have scrutinized the material in the charge-sheet. It would ultimately be for the trial Court to consider whether the last seen theory can be invoked. Whether the possibility of third person intervention is excluded is something which can be decided only after the evidence is adduced. At this stage, it appears to be common ground, that other than the last seen theory there is no incriminatory material at least as against the applicant. The theory that the deceased had a fancy for the applicant's wife and which was the motive appears to be only on the basis of the disclosure statement of the co-accused".

6. However, while granting bail to Sudhir @ Chetan, I noted the contention of the prosecution that against the co-accused, i.e. the present applicant, there is additional evidence. In so far as the additional incriminatory material is concerned, the clothes of the accused are allegedly recovered pursuant to section 27 memorandum. While the Chemical Analysis Report is not received as yet, the learned counsel for the applicant Mr. Mahesh Rai points out that the seizure panchanama and the requisition to the Chemical Analysis make no reference to bloodstain/s on the clothes.

7. Considering the overall material, the fact that the applicant has no criminal antecedents, that the co-accused is released on bail, I am inclined to grant bail.

8. This application is allowed subject to the following conditions:

- (i) The applicant be released on bail in connection with Crime 186/2020, registered with Police Station Alipur, District Wardha,

for offences punishable under sections 302, 201 read with section 34 of Indian Penal Code, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount;

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

(iii) The applicant shall not leave the country without the permission of the trial Court.

Judge

Belkhede