

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.394 OF 2022

IMRAN S/O YENUR SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. D. Munde, Advocate for applicant.
Mr. V. S. Badakh, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 19.04.2022

Pronounced on : 04.05.2022

ORDER :-

1. Present applicant came to be arrested on 22.01.2018 in connection with Crime No.05 of 2018 registered with Sengon Police Station, Dist. Hingoli for the offences punishable under Sections 302, 201, 120-B, 364 read with Section 34 of Indian Penal Code. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. D. Munde for the applicant and learned APP Mr. V. S. Badakh for the respondent – State.

3. Learned Advocate for the applicant has taken this Court through the entire charge-sheet and made submissions. So also, the learned APP

has taken this Court through the material which is alleged to be against the applicant, who has been arrayed as accused No.4 in the Sessions Trial No.13 of 2019.

4. Since the charge-sheet is filed, we are required to consider the contents thereof with an inference that the further physical custody of the applicant is not required for the purpose of investigation.

5. The FIR has been lodged by one Krushnarao Ramrao Pole. He was the brother of deceased Sarjerao. There was some dispute in respect of agricultural land between deceased Sarjerao and accused No.1 - Haribhau. Further, the prosecution story is that the wife of accused No.1 Haribhau is the real sister of the wife of accused No.2 Ratan Khatke. It has been contended in the FIR that accused No.1 Haribhau was threatening deceased Sarjerao for withdrawing the civil suit that was filed by Sarjerao against Haribhau in respect of the agricultural land. Accused No.1 had warned the cousin of the informant on phone on 31.12.2017 of dire consequences, if he doesn't settle the dispute amicably. According to the informant, deceased Sarjerao had left his house at about 10.30 a.m. on 01.01.2018 on his motorcycle. It was told by him that he is proceeding towards cutting salon at Hattapati. Thereafter, he never came back, but his dead body was found at about

11.30 a.m. on 04.01.2018 in a ditch by the side of the road. In the meantime, the missing report was filed on 02.01.2018. It was then revealed that accused No.1 along with co-accused including the present applicant had abducted deceased Sarjerao with an intention to kill.

6. Perusal of the charge-sheet would show that the case of the prosecution is resting on circumstantial evidence and, therefore, unless a chain is established even at the *prima facie* stage, we cannot jump to the conclusion that there is evidence against the applicant. Statements of witnesses have been recorded, however, they are not eye witnesses. The connection has been tried to be established on the basis of statement of the lodge owners with whom certain rooms were booked. According to the said person, accused No.1 had booked room on the ground that the persons who are working on his construction side need to be placed in the said room. He says that those persons resided there, however, accused No.1 had not paid him the amount. The Statements of witnesses are mainly indicating that accused No.1 Haribhau Dashrath Satpute is the main accused and he had hatched up the conspiracy to commit murder and he had motive to commit murder of the deceased, however, this Court had granted bail to said Haribhau Satpute on 22.07.2019. One Ratan Haribhau Khatke was granted bail on 08.06.2018 under Section 439 of the Code of Criminal Procedure.

Under such circumstance, when main accused has been granted bail, the custodial interrogation of the applicant is not required.

7. The prosecution intends to show that the present applicant was in the company of co-accused Nos.3 and 4 and the applicant has been identified by one Sudam Khillare. Sudam Khillare has stated that present applicant and other two persons were talking with deceased at about 12.30 p.m. near the betel stall at Hatta. That place is stated to be the place from where deceased was abducted. It is to be noted that unless it comes on record as to on what point of time the murder was committed, it cannot be said that said Khillare would be the witness on the point of last seen theory. In the earlier two applications of the co-accused, which have been decided by this Court, it has been observed that there is no direct evidence to connect the applicants therein with the crime in question. The statement of witnesses, who claim to have seen applicants therein following the deceased Sarjerao on motorcycle, when the deceased Sarjerao was going to Hatta Pati by itself would not be a strong circumstantial evidence to prove the theory of last seen together. These observations are applicable to the present applicant also. Another fact is that the present applicant had no motive to commit the crime and, therefore, the alleged discovery also cannot be taken as the evidence to reject his bail application and curtail his liberty. It would take long time

to stand his trial and with this kind of evidence, he need not be asked to languish in jail. Hence, the following order :-

ORDER

- I) Application is hereby allowed.
- II) Applicant – Imran s/o Yenur Shaikh, who has been arrest in connection with Crime No.05 of 2018 registered with Sengaon Police Station, Dist. Hingoli for the offences punishable under Sections 302, 201, 120-B, 364 read with Section 34 of Indian Penal Code, be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- III) He shall not tamper with the evidence of the prosecution in any manner.
- IV) He shall not indulge in any criminal activity.
- V) He should cooperate with the investigation.
- VI) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm