

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

CRIMINAL APPLICATION (BA) NO. 269 OF 2022

Prakash Shenfad Hiwale

...Versus...

State of Maharashtra

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

Court's or Judge's orders

Mr. M.P.Kariya, Advocate for the applicant
Mr. S.S.Doifode, APP for non-applicant /State

CORAM : AVINASH G. GHAROTE, J.

DATE : 19/04/2022

1] Heard Mr. Kariya, learned counsel for the applicant and Mr. Doifode, learned APP for respondent/State.

2] The applicant is arraigned for the offence under Sections 302, 394 and 201 of the IPC in Crime No. 641, registered with the Chikhli Police Station. The FIR is dated 16.10.2021, against an unknown person, in pursuance to a missing report dated 15.10.2021. The body of the deceased Radhabai was found on 16.10.2021. The applicant is arrested on 17.10.2021 and the charge-sheet has been filed on 10.01.2022.

3] Mr. Kariya, learned counsel for the applicant submits that since the missing report dated 15.10.2021 as well

as the FIR dated 16.10.2021 has been registered against unknown person, there is no linkage established to prima facie indicate the involvement of the applicant. He further submits that mere seizure of the ornaments, from the jeweler and the statement of jeweler and his worker namely Deepak Verma and Jeevan respectively, would not be a circumstance to incriminate the applicant. He therefore submits that the applicant is entitled for bail.

4] Mr. Doifode, learned APP opposes the application and submits that though initially the FIR has been registered against an unknown person, however, the investigation has established the linkage with the applicant. He further relies upon the discovery under Section 27 of the Indian Evidence Act, made by the applicant himself, who also has shown the shop of Om Anand Jewellers, wherein it was claimed that he had sold the jewellery belonging to deceased Radhabai. The reliance is also placed upon the CCTV footage as well as the CDR, to indicate the presence of the applicant at the shop of Om Anand Jewellers and the calls between the deceased Radhabai and the applicant. He therefore submitted that the link necessary to establish the guilt of the applicant is prima facie apparent and therefore, the application needs to be rejected.

5] The deceased Radhabai was residing alone. On

14.10.2021 approximately at about 12.00 noon, the deceased Radhabai was seen by one Vinayak Dashrath Dhoke, going from the agricultural field belonging to her mother, to her residence. Thereafter, her sister Yashodara had called her at about 11.30 a.m, however the call did not go through. A repeated attempt on 15.10.2021 was made at 6.30 a.m. in the morning which also did not fructify, as a result of which her sister namely Yashodara Pralhad Gawai, rang up Kantabai Hiwale, a neighbour of Radhabai, and upon enquiries, was told that she had not seen Radhabai since 14.10.2021, and her house was locked, due to which on 15.10.2021, Jaya Sukhdev Kankal, the niece of Radhabai, lodged a missing complaint (pg 32). On 16.10.2021, the brother of Jaya, namely Gourav, when he went to search for Radhabai, found her body at about 7.00 a.m. near water way, east to the field of Nivrutti Pandhare, and all the ornaments which were worn by her were missing, as a result of which the FIR came to be lodged. The applicant was apprehended on 17.10.2021 and has made a statement under Section 27 of the Evidence Act, in which he has showed the shop of Om Anand Jewellers at Buldhana, where he is stated to have sold the ornaments. That apart, a further discovery of the knife, pliers and mobile from which he had called late Radhabai was also made at the instance of the applicant. The invoices at pages 158, 159, 160 and 163 of Om Anand Jewellers indicate that gold and silver articles have been sold by the applicant to the said jeweler on 14.10.2021. The

CCTV footage at Om Anand Jewellers indicate the applicant approaching Om Anand Jewellers. The statement of Deepak Verma (pg 177), the owner of Om Anand Jewellers and Jeevan (Pg. 200), the employee at Om Anand Jewellers indicate the presence of the applicant and the sale of the ornaments by the applicant. The articles have been identified by Jaya, niece of the deceased; Gaurav, nephew of the deceased (page 103) and so also her sister Shobha. The CDR (pg 232) also establishes that the applicant had called Radhabai on 14.10.2021 at around 10.30 a.m. The PM report indicates that the throat of the deceased has been cut off by a sharp edged weapon and the discovery of the knife is at the instance of the applicant under Section 27 of the Evidence Act, considering which prima facie it appears that the linkage of the applicant with the crime appears to be there on record. Considering the nature of the crime, and the manner in which it is committed, I do not feel that this is an appropriate case to release the applicant on bail. The application is, therefore, rejected.

JUDGE

Rvjalit