

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

CRIMINAL APPLICATION (BA) NO.685 OF 2022

Balu Laxman Bhakare

Versus

State of Maharashtra, through P.S.O., P.S. Balapur, Tq. & Dist. Akola

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

Court's or Judge's Order

Shri A. S. Mardikar, Senior Advocate a/w Shri A.M. Kshirsagar, Adv.
for the applicant.

Shri A.M. Kadukar, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 01/08/2022

1. The applicant is seeking bail in connection with Crime No.495 of 2019, dated 27.12.2019, registered with Police Station Balapur, District: Akola, for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

2. Shri Mardikar, learned Senior Advocate for the applicant submits that except the present applicant, all the other co-accused persons have been released on bail. It is further pointed out that the first application of the applicant was rejected by this Court on 22.06.2021. However, thereafter there is no progress in the trial, except framing of charges.

3. He further submits that the present application is moved on two counts, firstly there is no progress in the trial and secondly, at the time of deciding the first application some material was not pointed out to this Court otherwise, the decision might have been different.

4. Shri Mardikar, learned Senior Advocate points out that in view of CDR and recovery of spade at the instance of applicant, the earlier application was rejected. He has pointed out that the recovery is shown from the spot of incident or the place where the body was found, which was in the control of the Police.

5. He further submits that CDR report is not sufficient to implicate the applicant in the alleged offence considering the relation of the accused.

6. Thus, he submits that considering the nature of evidence, and considering the ground on which the earlier application was rejected, it is not sufficient to deny parity to the applicant while two other accused persons have already been released on bail and more particularly, when whole case is based on circumstantial evidence.

7. He further submits that the applicant is in jail from 13.12.2019 i.e. for more than one and half years. It is pointed out that there are 19 witnesses and considering the

fact that recently charges have been framed, the trial will not be concluded in near future. Thus, He submits that considering the nature of evidence collected by the Investigation Officer (IO) and absence of direct evidence against the applicant, keeping the applicant in jail for uncertain period more particularly when further custody is not required in view of the fact that the charge-sheet has been filed, would amount to pre-trial punishment.

8. On the other hand, Shri A.M. Kadukar, learned APP opposes the present application and submits that the earlier application was rejected on merit and absence of change in circumstance this Court may not grant bail to the applicant. He further submits that if the applicant is released on bail, there is every likelihood he may pressurize the prosecution witness. Accordingly, he prays for rejection of the present application.

9. I have perused the Case Diary, First Information Report (FIR) and the earlier order passed by this court while rejecting the bail application of the applicant.

10. In this case, the allegations are that the accused no.2 was having illicit relations with accused No.1 i.e. the applicant and both of them wanted to marry. However, as the deceased was a hurdle in their marriage therefore, they

decided to eliminate and for this purpose, they took help of accused No.2 who is the friend of the applicant. Accordingly, on 12.12.2019 all three accused persons took the deceased in the forest under the pretext of having meal, where they consumed liquor and then the deceased was killed to death by strangulation and his body was buried in forest itself.

11. This Court on considering the fact that a spade which was used in the alleged offence, is recovered at the instance of applicant and considering the CDR, the application was rejected.

12. In this case, the spade was recovered from the place where the dead body was found. At the time of recovery, the spot was in the control of the Police. The body was found in the decomposed stage and the cause of death was “compression of neck”. Hence, it is the case of the strangulation.

13. All the accused persons are related with each other and therefore, in this case, CDR cannot be considered as sufficient evidence to deny bail to the applicant and further considering the spot where from the spade was recovered, I am of the opinion that, the applicant is entitled for grant of bail.

14. In this case, the other accused persons have already been released on bail and as the whole case is based on circumstantial evidence, I am of the opinion that the apprehension of the learned APP that if the applicant is released on bail, he may pressurize the prosecution witnesses can be addressed by imposing some stringent condition. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No. 495 of 2019, dated 27.12.2019, registered with Police Station Balapur, District: Akola, for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction of Police Station Balapur, Dist. Akola, till the culmination of trial.
- d) The applicant shall provide his address along with name of the nearest Police Station and shall attend the concerned Police Station on 1st day of

each month between 09.00 a.m. to 11.00 a.m.,
till the culmination of the trial.

- e) The applicant shall not tamper with the
prosecution witnesses.

The criminal application is **disposed of**
accordingly.

[ANIL S. KILOR, J.]