

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

Criminal Application (BA) No. 693 of 2022

Akshay Gajanan Yeole

Versus

State of Maharashtra, through Police Station Officer, Police Station Pardi,
Nagpur City.

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

Court's or Judge's Order

Shri R.M.Daga, Advocate for the applicant.

Shri T.A. Mirza, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 27th JULY, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 43 of 2020 dated 3rd February, 2020 registered with Police Station Pardi, District : Nagpur, for the offence punishable under Section 302, 364, 120B, 201 read with Section 34 of Indian Penal Code (IPC), Section 3 Maharashtra Control of Organized Crime Act (in short hereinafter referred as “MCOC Act”), Section 4 read with Section 25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. It is the case of the prosecution that informant Police Head Constable Rajesh Tiwari received a secret information that some persons had killed Monesh Thakre and had disposed of the dead body. Therefore, present applicant along with two co-accused were apprehended and interrogated. It was revealed that after 10 p.m. on 27th November, 2019 from Kajal Beer Bar, Nagpur, the present applicant and the co-accused no.2 namely Nilesh Aagare took the deceased Monesh on bullet motorcycle of the applicant, reached at locked house opposite to the house of the applicant and then by taking the deceased in the hall, the present applicant and the co-accused no.2 by using a dagger killed the deceased and then with the help of absconding accused Somesh Bilariya took the dead body on Activa Scooter at an open ground on the eastern side of Jagjivanram High School, Ghatate Nagar and by pouring petrol, the dead body was burned. It is further stated in the First Information Report that on next day i.e. 28th November, 2019 in the evening the present applicant and the co-accused no.2, by using Indica Car, threw the remains of the burnt corpus in the Nala flowing under a Railway bridge going towards Jamatha village. On the basis of such information FIR was lodged against the present applicant.

3. Shri Daga, learned counsel for the applicant submits that initially on 28th November, 2019, a missing report was lodged by the parents of the deceased. It is further submitted that on the date of lodgment of missing report, one of the friend of deceased told the father of deceased that he had seen the deceased with accused nos.1 and 2. However, the said fact was not disclosed by the parents while lodging the report.

4. It is further submitted that the First Information Report was not lodged by the parents but it was lodged by the police constable on 3rd February, 2020, whereas the deceased was missing from the evening of 27th November, 2019. The statement of witnesses were recorded on 7th February, 2020. Accordingly, he submits that except the statement of witnesses stating that deceased was lastly seen with the applicant and the accused No.2, there is no incriminating material against the applicant.

5. He further submits that after completion of investigation, the charge-sheet has been filed and no further custody of the applicant is necessary in this case.

6. Shri Daga, learned counsel for the applicant points out that though there is no sufficient material to apply the provisions of MCOC Act to the applicant, the provisions of MCOC Act have been illegally applied.

He further submits that applicant is in jail since 3rd February, 2020 i.e. for more than two years. He, lastly, submits that there is a reasonable ground for believing that the applicant is not guilty of alleged offence and he accordingly prays for grant of bail.

7. On the other hand, learned Additional Public Prosecutor has opposed the present application and submits that on the basis of last seen theory, the applicant was arrested and there are statement of witnesses which supports the case of prosecution. Accordingly, he prays for rejection of bail.

8. I have perused the chargesheet and the First Information Report. From the chargesheet, it can be revealed that initially on 28th November, 2019 a missing report of the deceased Monesh Thakre was lodged. From the statement of mother and father it appears that on the date of lodging of missing report they were told one of witnesses that deceased was seen alongwith accused nos. 1 and 2, in the night of 27th November, 2019. However, no explanation is offered as to why this fact was not brought to the notice of police. All the statement of witnesses were recorded after 7th February, 2020, on lodgment of First Information Report on 3rd February, 2020.

9. The evidence on which the prosecution wants to rely upon while opposing the present application is the recovery of the bones.

10. The statement of witnesses also do not speak more than the fact that the deceased was last seen with the accused nos. 1 and 2.

11. In this case, it is informed that in similar offence, the applicant has been acquitted. As far as other offences are concerned, there is no commonality.

12. In this case investigation is completed and the charge-sheet has been filed. On perusal of the charge-sheet and in absence of any *prima facie* incriminating material available against the applicant, I am of the opinion that there is a reasonable ground for believing that the applicant is not guilty of alleged offence and further there are reasonable ground for believing that the applicant is not likely to commit the offence while on bail. Furthermore, necessary care can be taken by putting some stringent conditions.

13. In that view of the matter, I pass the following order:

- i. It is directed that the applicant shall be released on bail in Crime No.43 of 2020 dated 3rd February, 2020 registered with Police Station Pardi Dist. Nagpur for the offence punishable

under Section 302, 364, 120B, 201 read with Section 34 of Indian Penal Code, Section 3 Maharashtra Control of Organized Crime Act, Section 4 read with Section 25 of Arms Act and Section 135 of Maharashtra Police Act, on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount.

ii. The applicant shall not enter into the territorial jurisdiction of Nagpur (City), except for the trial.

iii. The applicant shall provide his address along with the name of the nearby police station, to which he shall attend on 1st and 16th day of every month between 10.00 am to 12.00 noon, till the conclusion of the trial.

iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.

The application is **disposed of** accordingly.

[ANIL S. KILOR, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 28.07.2022
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