

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

CRIMINAL APPLICATION (BA) NO.1079 OF 2022

Prashil S/o Sanjay Jadhav .Vs. State of Maharashtra, through P.S.O., P.S. Hudkeshwar,
Nagpur

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

Court's or Judge's Order

Shri C.B. Barve, Advocate for the applicant.

Ms K.R. Deshpande, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 28/09/2022

Heard.

2. The applicant is seeking bail in Crime No.226 of 2020, dated 14.06.2020, registered with Police Station Hudkeshwar, District: Nagpur, for the offence punishable under Section 302, 363, 364 and 201 read with Section 34 of the Indian Penal Code and Sections 4 and 27 of the Arms Act and Section 135 of the Maharashtra Police Act.

3. In this crime, the whole case is based on circumstantial evidence and on the basis of last seen theory, the applicant has been arraigned as accused. The learned counsel for the applicant submits that, on the basis of memorandum under Section 27 of the Indian Evidence Act, the prosecution is opposing the application by using the same to show the involvement of the applicant.

4. He submits that the memorandum under Section 27 of the Indian Evidence Act, cannot be used for the purpose more than the purpose of recovery. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Venkatesh alias Chandra and another Vs. State of Karnataka*¹.

5. Ms K.R. Deshpande, learned APP strongly opposes the present application and prays for rejection of the same.

6. I have perused the Charge-sheet and the application.

7. The Hon'ble Supreme Court of India in the case of *Venkatesh (Supra)* has observed thus:

“23. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.”

1 2022 SCC OnLine SC 765

8. In the light of the above referred observation, memorandum under Section 27 of the Indian Evidence Act, cannot be relied in this case, to find out *prima facie* involvement of the applicant particularly, on the basis of narration recorded by the Police in the memorandum under Section 27 of the Indian Evidence Act. Other than the memorandum under Section 27, the last seen theory is applied to the case of the applicant.

9. However, considering the time gap between the time, during which the deceased was seen with the applicant and the time when the body of the deceased was recovered, *prima facie*, on the basis of last seen theory it is not safe to arrive at any conclusion. In addition to this, two co-accused persons have already been released on bail.

10. Thus, considering the fact that the charge-sheet has been filed and the whole case is based on circumstantial evidence, I am of the opinion that the applicant is entitled for grant of bail. 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. 226 of 2020, registered with Police Station Hudkeshwar, District: Nagpur, for the offence punishable under Section 302, 363, 364 and 201 read with

Section 34 of the Indian Penal Code and Sections 4 and 27 of the Arms Act and Section 135 of the Maharashtra Police Act, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station as and when his presence is required.

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

JUDGE