

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

CRIMINAL APPLICATION (BA) NO.1293 OF 2021

Ajay Bharat Baale and others

Vs.

The State of Maharashtra Through P.S.O. Asegaon, Washim

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

Court's or Judge's orders

Mr. Mir Nagman Ali, Advocate, for applicants.

Mr. S. M. Ghodeswar, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/02/2022

Heard Mr. Ali, learned counsel for the applicants and Mr. Ghodeswar, learned APP for non-applicant/State.

2. The application seeks release of the applicants on bail for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, for having caused the death of one Mukesh Gautam Bhagat between 12.07.2021 to 13.07.2021. The applicants have been arrested on 15.07.2021. Charge-sheet has been filed on 29.09.2020.

3. Mr. Ali, learned counsel for the applicants submits that the case against the applicants is purely based upon the circumstantial evidence, and it is not even a case of last seen, for the reason that the deceased Mukesh was last seen by his wife, with Shuddodhan

Ashok Sonone. He submits that the confessional statement of Shuddodhan cannot be made use of for the purpose of considering a *prima facie* case for bail and there have to be other circumstances on record, which indicate the involvement of the applicants. Except for the seizure of the motorcycle and one mobile, under Section 27 of the Indian Evidence Act, there is nothing on record to indicate the involvement of the applicants. He further submits that there is discrepancy in the cause of death itself, as the initial allegation based upon the confession, was that the deceased had been strangled, whereas the post mortem report, gives the provisional cause of death as drowning. He therefore, submits that considering the absence of any linkage, sans the confessional statement, the applicants are entitled to bail.

4. Mr. Ghodeswar, learned APP opposes the application and relies upon the confessional statement of Shuddodhan as well as the recovery of the motorcycle and the mobile, from the applicants and submits that the application be rejected.

5. It is the settled position of law that the confession by a co-accused, cannot be relied upon, unless other material and circumstances are available on record to indicate the complicity of the applicants, which is spelt out in ***Haricharan Kurmi and other Vs. State of Bihar, AIR 1964 SC 1184***. It is therefore apt that the confessional statement of the co-accused Shuddodhan cannot be made the basis of the opposition by the learned APP and the

circumstances from the record have to be indicated, for the purpose of pointing out the complicity of the applicants. In the instant case, the only circumstance to indicate the complicity of the accused in the present matter, as pointed out the learned APP, is the seizure under Section 27 of the Indian Evidence Act of the motorcycle and the mobile, which by itself, cannot be the only circumstance, to indicate the complicity of the accused. There is nothing else on record, except, an earlier complaint by the deceased against the applicants, for having assaulted him on account of protesting regarding a tiff between the son of the deceased and that of one of the applicants for which an earlier FIR No.69 of 2021 came to be lodged on 15.03.2021. In my considered opinion, the above circumstances, would not be sufficient to continue the further incarceration of the applicants, as the charge-sheet has already been filed. Hence the following order.

ORDER

- (i) The criminal application is allowed.
- (ii) The applicants be released on bail for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code on their furnishing PR bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) and two solvent sureties each of like amount.

(4)

17.ba.1293.2021

(iii) The applicants shall not tamper with the prosecution witnesses or try to influence the prosecution witnesses in any manner.

(iv) The applicants shall attend each and every date before the Sessions Court and shall ensure that the trial is not protracted on their account.

(v) It is made clear that above observations are only *prima facie* in nature and would not influence the trial Court in any manner.

JUDGE

Sarkate