

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.564 OF 2023

MANSINGH BAIJNATH VERMA
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ruchir Subodh Wani
APP for Respondent : Mr. K. S. Patil
...

CORAM : S. G. MEHARE, J.

DATE : 20-04-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant is seeking bail in C.R.No.272 of 2019 registered with Visarwadi Police Station, Taluka Nawapur, District Nandurbar, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
3. The prosecution has a case that the deceased and the accused were serving with the common employer. Before the date of the incident, the applicant was on leave. The deceased took the truck of his employer in custody for delivering the steel rods at Surat. However, the truck did not reach. Hence, the purchaser inquired with the employer of the applicant. Therefore, the employer went to search the truck. The truck which the deceased

had taken found stationary in front of one Hotel. Then the dead body of the deceased was found 50 meters away from one hotel. In the investigation it was transpired that the deceased and the applicant were seen together and captured in CCTV footage.

4. The applicant had filed bail application before this court bearing No.1137 of 2022. However, this Court (Coram: R. G. Avchat, J.), by order dated 17 August 2022 passed the following order:-

“It is informed that, the trial has now been commenced. Three witnesses have been examined so far. The trial Court is requested to expedite the hearing and conclude the trial within six months from the date of receipt of copy of this order. If the trial could not be concluded within the period specified above, the applicant would be at liberty to move afresh. Needless to mention, such application would be decided on its own merits. The bail application is disposed of.”

5. Since the trial could not be completed within six months, taking shelter of the above order, the applicant again approached this court.

6. Thereafter, the learned Principal District and Sessions Judge, Nandurbar, sought an extension of time to complete the trial and further six months were extended. At the time of extension of time to complete the trial, the learned counsel for the applicant

was present.

7. It is the argument of the learned counsel for the applicant that since the Court has granted an opportunity to approach this Court, if the trial is not concluded within six months, he has right to claim the bail. He has also argued that when the order dated 17 August 2022 was passed, the matter was not heard on merit. Hence, it may be heard on merit.

8. It seems that the application remained to decide on merit. The applicant was supposed to press the application for hearing on merit. But, he accepted the order dated 17 August 2022. Since the time was extended as per order dated 17.03.2023, the order dated 17 August 2022 was continued.

9. The learned counsel for the applicant tried to refer the deposition of the witnesses before the trial Court. It was brought to notice of the learned counsel for the applicant that it was the deposition recorded by the learned Sessions Court and the trial is *sub-judice*. Hence, this Court cannot refer to the testimonies of the witnesses. If this is allowed, it would be a direct interference with the trial of the case. If any findings are recorded based upon the testimonies of the witnesses, it may influence the Judge of the trial Court. The judicial discipline is, not to interfere with the trial any way pending before the trial Court.

10. The learned counsel for the applicant has vehemently argued that the Investigating Officer did not make any inquiry whether the scarf by which the deceased allegedly strangled was lying in the truck which the deceased was driving. This is an apparent illegality and, therefore, the applicant deserves bail.

11. He has also argued that the sole evidence of CCTV footage can also not be believed. Its Hash value is doubtful for the reasons that many copies were prepared from the CCTV footage. Again no observations about its evidentiary value, can be recorded as the trial has been commenced.

12. While considering the bail application, the Court is required to see *prima facie* evidence against the accused, gravity of the offence, the possibility of tampering with the prosecution witnesses and severity of the punishment if the applicant would be convicted. Bearing in mind the scope under Section 439 of the Code of Criminal Procedure, the Court cannot travel beyond such powers.

13. After hearing the learned counsel for the applicant and going through the papers, the Court expressed disinclination to grant bail. The learned counsel for the applicant, on instructions, seeks leave to withdraw the application. Leave granted. The application stands dismissed as withdrawn.

14. This Court extended the period to conclude the trial on satisfying the reasons. Hence also, the application become *infructuous*.

(S. G. MEHARE)
JUDGE

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