

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (BA) NO. 14/2023

Abhijit Dinesh Pande

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Ballarpur

Dist. Chandrapur.

.. Respondent

.....
Mr. M.N. Ali, Advocate for the Applicant

Mr I.J.Damle, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th February, 2023.

PC:

The applicant has filed application under Section 439 of the Criminal Procedure Code, 1973. The applicant has been arrested in Crime No. 283 of 2022, registered with Police Station, Ballarpur, District Chandrapur for the offences punishable under Sections 302, 201, 120-B and 203 of the Indian Penal Code (IPC). The applicant has been arrested on 12/03/2022, since then he is in jail. The charge-sheet has been filed.

2. The accusation against the applicant is that he along with co-accused Suman have eliminated Suman's husband. It appears that Suman and Suraj Sonkar (accused No.1) were in illicit relationship. Suraj and Suman's husband were initially friends. The husband came to know of illicit relationship and, thereafter, the relations between Suman and her husband so also accused No.1 were strained.

3. The learned Sessions Court has rejected the bail application

on the ground that the offence is serious and that there are direct allegations of illicit relationship between the accused No.1 and the applicant.

4. I have gone through the record placed before me with the assistance of the learned counsel for the parties. This is a typical case where investigating agency has detected the crime by applying shortcut method, which ultimately may prove fatal to the prosecution. The police has come in motion on the basis of statement dated 11/03/2022 made by accused No.1. The accused No.1 has informed the police that on 10/03/2022 at around 7.00p.m. he and Rameshwar went out on Rameshwar's motorcycle. They consumed liquor at one place and proceeded further for dinner at Dhaba near Rajura. After finishing dinner at about 9.00 p.m. they were returning back on motorcycle. Rameshwar was riding the motorcycle. When the motorcycle approached the bridge of Wardha river, one motorcycle came from opposite side and because of it's light Rameshwar lost control and both fell down. Accused No.1 fell on the road, however, Rameshwar along with motorcycle fell in the river. Accused No.1 made an attempt to search Rameshwar through mobile torch, but could not find him. Thereafter, he sought help of two fruit stall vendors who were sitting nearby, to trace Rameshwar but could not. Thereafter, he called Police who came at the spot in some time. The police, accused No.1 and the fruit stall vendors made one more attempt to trace Rameshwar. They went in the river and under the light of the torch searched Rameshwar, but in vain.

5. For the reasons best known to the police they have not acted on this statement. The police ought to have registered First Information

Report(FIR), but did not. It appears that statement of fruit stall vendors have also been not recorded. It would be important to note here that the information given by accused No.1 indicates that the two fruit stall vendors were present near the bridge, selling fruits. Their statements were necessary in view of the subsequent twist to the story.

6. Immediately on the next date i.e. 12/03/2022 another statement of accused No.1 came to be recorded though at the top of the statement date 11/03/2022 has been mentioned. The accused No.1 has within 24 hours of first statement, drastically changed his version and stated before the police that he was in illicit relationship with Suman. Rameshwar suspected the relationship and therefore, restrained accused No.1 from coming home. Rameshwar thereafter started harrassing Suman as well. He further states that in January, 2022, Suman left the house and went to her home town Banda, Uttar Pradesh. The accused No.1 went there and resided with her for 4 to 5 days. Both had decided to get married, but felt that in the life time of Rameshwar they can't do so, therefore, they decided to eliminate Rameshwar.

7. It is also stated in the statement that on 26/02/2022 in the meeting between Rameshwar, Suman, her mother and accused No.1 an attempt was made to convince Rameshwar that there was no illicit relationship between Suman and accused No.1. However, Rameshwar did not listen and abused accused No.1. Thereafter in continuation to the conspiracy to eliminate Rameshwar on 10/03/2022, accused No.1 took Rameshwar to Dhaba. He, with the assistance of the applicant has drown Rameshwar in the Wardha river. The accused No.1 then called the police and narrated the earlier story. The FIR came to be recorded

after finding the body on 12/03/2022 and in view of subsequent statement made by accused No.1. This is how the police thought it proper to detect the crime.

8. Section 25 of the Indian Evidence Act provides that no confession made to a police officer, shall be proved as against a person accused of any offence. Thus, the subsequent statement of accused No.1, being confessional statement, cannot be proved against him. If the said statement is said to be inadmissible, no reliance could be placed on such statement. What remains then is the earlier statement of the accused No.1 which narrates story of accidental death. The police, however, has blamed applicant and co-accused of eliminating Rameshwar.

9. Thus, there is hardly any evidence in support of the prosecution version of involvement of the applicant in the crime. The charge-sheet has been filed on 08.06.2022. However, the charge has not yet been framed and it would take some time to commence the trial. Considering the evidence collected by the investigating agency, the liberty of the applicant cannot be compromised. Learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The applicant has deep roots in the society in as much as he is residing since long at the address given in this Application.

10. The observations made in this order are prima facie in nature and are made for deciding the present application only and the learned trial judge shall not get influenced by it.

11. The applicant has made out a case in his favour, hence, the

following order :-

ORDER

- (i) Criminal Application is allowed.
- (ii) The applicant be released on bail, in Crime No.283 of 2022, registered with Police Station, Ballarpur, District Chandrapur for the offence punishable under Sections 302, 201,120-B, 203 of the Indian Penal Code, on his executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall attend Police Station Ballarpur, District Chandrapur on every Monday, between 3.00 to 5.00 p.m.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or any Police Officer.
- (v) The applicant shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the police.
- (vi) The applicant shall maintain law and order.
- (vii) The applicant shall, at the time of execution of bond, furnish her address and telephone/mobile number(s) to the Investigating Officer and the Court concerned, and shall not change the residence till the final disposal of the case.
- (viii) The Applicant shall regularly attend the Court and co-

operate the learned trial Court to complete the trial for the above offences.

(ix) In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in above terms.

(ANIL L. PANSARE, J.)

sahare