

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

CRIMINAL APPLICATION (BA) NO.19 OF 2023

Deva @ Devanand Devrao Waghmare vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. D.N. Mudgale, Advocate for applicant.
Mr. I. J. Damle, APP for respondent.

CORAM : ANIL L. PANSARE J.

DATE : 25/01/2023

1. Heard learned counsel for the parties.
2. By this application, applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No.132/2022 registered with Police Station, Digras, District Yavatmal, for the offences punishable under Section 364, 302, 201, 120-B read with Section 34 of the Indian Penal Code. The FIR has been registered against the applicant and co-accused on 23.2.2022. The applicant has been arrested on 23.2.2022 and since then he is behind the bars.

3. Briefly stated, the prosecution story is that, Laxman Shastrakar, Shrawan Shastrakar and Murlidhar Shastrakar are three real brothers. Laxman Shastrakar's family is accused of committing murder of Shrawan. Murlidhar is informant. The motive behind the murder is illicit relationship between deceased Shrawan and the daughter-in-law of Laxman Shastrakar. The informant has stated that Laxman Shastrakar, his sons Nitin and Chetan, Jyoti (wife of Nitin) and the friends of Nitin namely, Akash Jadhao, Devanand @ Deva Deorao Waghmare (applicant) and Pramod Darasingh Rathod have allegedly kidnapped deceased Shrawan on 9.3.2021 after having hatched conspiracy to eliminate him. Ultimately, the plan has been executed but the exact date is not known.

4. The learned counsel for the applicant submits that vide order dated 9.1.2023, co-accused namely Laxman Shastrakar and Chetan Laxman Shastrakar have been released on bail. The reasons finds place in paragraph 5 of the order, which reads thus:

“5. Perused record with the help of both the sides. The FIR would only indicate that the deceased Shrawan went missing sometimes

on or about 10.3.2021. Thus, after about a year FIR came to be lodged, that too, only on the suspicion that the Applicants and their family might have committed the murder. There are no eye witnesses to the incident. In fact, there is absolutely no admissible evidence, by which it could be said that both the Applicants have played any role as alleged by the prosecution. Further, the statement of informant that has been recorded on 15/3/2022 indicates that he had knowledge of the incident in the month of July-2021. He has also stated that at that time he has lodged the report. The statement was recorded by the Police. The said report and statement are not placed on record. Thus, there are many discrepancies in the prosecution evidence. The story put-forth by the prosecution appears to be more of suspicion than the reality”.

5. The learned counsel for the applicant submits that there is no admissible evidence against the applicant as well. He is stated to have arrested the co-accused in commission of crime.

6. The learned APP could not point out the statement of any witness indicating the complicity of the applicant in the crime. There is nothing on record why the benefit of parity should not be granted to the applicant.

7. On enquiry, learned Counsel for the Applicant submits that there are no criminal antecedents against the applicant. He is residing in his own house. Thus, he has strong roots in the locality. The trial is not yet commenced. It will take some time to commence and conclude the trial. The applicant therefore, has made out a case in his favour to grant bail.

8. The observations made in this order are prima facie in nature and are made for deciding the present Application only. The learned trial Judge shall not get influenced with the above observations.

9. Resultantly, following order is passed.

ORDER

(i) Criminal Bail Application is allowed.

(ii) The Applicant - Deva @ Devanand Devrao Waghmare be released on bail in

connection with the Crime No.132/2022 registered with Police Station, Digras, District Yavatmal, for the offences punishable under Sections 364, 302, 201, 120-B read with Section 34 of Indian Penal Code, on his executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) 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 him/her from disclosing such facts to the Court or any Police Officer.

(iv) The Applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police.

(v) The Applicant shall not leave the territory of Digras Police Station without prior permission of the Court, till the trial is over.

(vi) The Applicant shall maintain law and order.

(vii) The Applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number to the Investigating Officer and the Court concerned, and shall not change his 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 offence and shall not seek adjournment.

(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.

10. Criminal Bail Application is disposed of accordingly.

JUDGE

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 25.01.2023 18:29