

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

...
CRIMINAL APPLICATION (BA) NO. 1500 /2022
&
CRIMINAL APPLICATION (BA) NO. 82/2023

CRIMINAL APPLICATION (BA) NO. 1500 /2022

Ajit Gaibids Fulzele

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Maregaon Dist. Yavatmal.

.. Respondent

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

Mr.Nitin Rode, APP for Respondent
.....

CRIMINAL APPLICATION (BA) NO. 82 /2023

Rupesh s/o Shankarrao Naitam

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Maregaon Dist. Yavatmal.

.. Respondent

.....
Mr.R.M.Darunde, Advocate for the applicant

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

CORAM: ANIL L. PANSARE, J.

DATED : 20th February, 2023.

PC:

By means of these Applications under section 439 of the
Criminal Procedure Code, the applicants are seeking bail. The applicants

have been arrested on 15.05.2022 in Crime No.160/2022 for the offences punishable under Sections 302, 201 r/ws. 34 of the Indian Penal Code, registered at Police Station Maregaon Dist. Yavatmal.

2. Having heard both the sides at length, it transpired that there are four accused, namely, Vishal, Rupesh, Ajit and Prashant. Rupesh Naitam is the applicant in BA No.82/2023, whereas Ajit Fulzele, is the applicant in BA No.1550/2022. The allegation is that these four persons have committed murder of Vilas Gohokar. According to the prosecution, Vishal had an old enmity with Vilas on account of dispute of plot/land.

3. The learned counsel for the applicants submit that there is no direct evidence. The entire story of the prosecution is based on the statement made under Section 27 of the Indian Evidence Act, by Ajit and Prashant. It appears that at the instance of Ajit, motorcycle, scarf, chappal, torch, injection and syringe have been recovered. However the postmortem report shows that the cause of death is strangulation. Thus, except for scarf, the other articles recovered are hardly of any use. Further, there is nothing on record to show that scarf has been used to strangle the deceased. Vishal has already been released on bail by this Court vide order dated 05.12.2022 in Criminal B.A. No.157/2022.

4. The basic theory of the prosecution is that the accused persons have conspired not to eliminate Vilas Gohokar but to cause loss to his cattle and, therefore, syringes etc. were bought. The learned APP contends that while the applicants and co-accused were all set to kill the cattle, the deceased who was taking rest, got up and accosted these

persons. Vishal fled away but the remaining three have committed murder.

5. This submission however does not find support by way of admissible evidence. What has been argued is by taking aid of the memorandum *panchnama* recorded u/s 27 of the Evidence Act. It is well settled that the memorandum *panchnama* in its entirety is not admissible u/s 27. What is admissible is the disclosure at the instance of the accused when it is shown that the material/articles so discovered has been either used in the crime or has direct nexus with the crime. In the present case, the admissible evidence is the articles that have been recovered at the instance of Ajit & Prashant. As stated earlier, none of the recovered articles indicate the complicity of the applicants with the crime. The remaining part of the memorandum cannot be taken aid of to prove the guilt of the applicants.

6. The applicants are behind the bars since 15.05.2022. The charge-sheet has been filed on 08.06.2022. The charge has not yet been framed. It will take some time to commence and conclude the trial. When enquired, learned Advocates for the applicants state that there are no criminal antecedents against the applicants. They are residing at the addresses given, for last many years. In view of the above and considering the nature of evidence against the applicants, I am of the view that no fruitful purpose will be served by keeping them behind the bars.

7. Needless to mention, that the observations made hereinabove are for the purpose of deciding these Applications only and

the trial Court shall not get influenced by it.

8. Hence, the following order :

ORDER

- (i) The Applications are allowed.
- (ii) The applicant-Ajit Gaibidas Fulzele, in B.A. No.1500/2022 and the applicant Rupesh Shankarrao Naitam in B.A. No. 82/2023, both be released on bail, in connection with Crime No. 160/2022 registered with Police Station Maregaon Dist. Yavatmal for the offences punishable under Sections 302, 201 r/ws. 34 of the Indian Penal Code, on they furnishing P.R. bond in the sum of Rs. 25,000/- each, with one surety in the like amount.
- (iii) The applicants shall, at the time of execution of bond, furnish their 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.
- (iv) The applicants shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) The applicants 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 from disclosing such facts to the Court or any Police Officer.
- (vi) The applicants shall maintain law and order.
- (vii) 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 Applications are disposed of in the above terms.

[ANIL L. PANSARE, J.]

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