

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****CRIMINAL APPLICATION (BA) NO. 124/2023**

Mohammad Jafar Mohammad Yasin .vs. State of Maharashtra through its PSO P.S.
Arvi, Dist. Wardha

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

Court's or Judge's orders

Mr. R. M. Daga, Advocate for applicant.

Mr. M. J. Khan, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 6, 2023.

This is an application under Section 439 of the Criminal Procedure Code, 1973. The applicant has been arrested on 02.06.2022 in Crime No.463/2022, registered with Police Station Arvi, District Wardha, for the offences punishable under Sections 302, 397, 364, 120-B, 201, 411 read with Section 34 of the Indian Penal Code, 1860.

2. Having heard both the sides and having gone through the record, it transpires that there are six accused. It is alleged that out of them, accused nos.1, 2, 3 and 4 (present applicant) have committed murder of one Mahendra Shingne at about 08:00 P.M. on 25.05.2022. The motive behind the crime is to steal the gold ornaments on the person of the deceased. Accused no.5 is jeweler. The ornaments were allegedly sold to her for Rs.3,94,000/-. The ornaments were melted and transposed in ingot. Accused no. 6 is the one who guided accused nos.1 to 4 to accused no.5.

3. Unfortunately, there is no direct evidence of commission of murder. One of the witnesses namely, Mohd. Anwar has stated that on 25.05.2022 i.e. on the date of incident itself at about 12:30 in the night, he has seen accused nos. 1, 4

and 6 on motorcycle in frightened condition. He has, however, not taken any action against these accused. Son of the deceased has ultimately lodged the missing report on 29.05.2022. The investigating officer managed to get mobile of the deceased. He found that the accused no.1 was in contact with the deceased and therefore accused no.1 and thereafter accused no. 2 were arrested. At their instance, body of deceased was recovered. Accused nos.1 and 2 have stated that accused nos.3 and 4 were also involved in the crime and therefore they have been arrested. Similarly, role of accused nos. 5 and 6 was disclosed in interrogation.

4. Thus, the evidence collected is in the form of interrogation of co-accused. Learned A.P.P could not point out any evidence to show that the applicant has either committed murder of Mahendra Shingne or that he had been to the shop of the accused no.5 to sell the ornaments. Learned A.P.P however submits that the amount of Rs.23,000/- has been recovered at the instance of the applicant. He further submits that CDR details indicate that the applicant was in contact with the co-accused.

5. As against, learned counsel for the applicant submits that the amount of Rs.70,000/- was recovered at the instance of accused no.6-Pankaj, as well but he has been released on bail. Similarly, accused no.5 is also released on bail. At this stage, learned A.P.P submits that the applicant has criminal antecedents. Two crimes have been registered against him. First is Crime No. 618/2016, dated 11.08.2016 for the offence punishable under Section 380 of the IPC and second is Crime

No.21/2022, dated 30.01.2022 for the offence punishable under Sections 394, 452, 342, 506 read with section 34 of the IPC.

6. Having heard learned counsel for the parties and having gone through the record, though there are criminal antecedents against the applicant, primary duty of the investigating officer is to establish his role in the present crime. The evidence, as discussed above is admittedly weak. It is quite challenging for the prosecution to prove the complicity of the applicant with the crime even if the entire story put forth by the prosecution is to be accepted. This is so because except for the statement of Anwar, there is no evidence to even suspect the applicant to have committed crime. The statement of Mohd. Anwar would only indicate that the accused no.1, applicant and accused no. 6 were seen in frightened condition, will not be sufficient to show involvement of the applicant in the crime. In the circumstance, merely because there are criminal antecedents, the personal liberty of the applicant as enshrined in the Constitution cannot be compromised.

7. The charge-sheet has been filed. Charge is not yet framed. It will take time to commence and conclude the trial. In the circumstances and considering the nature of evidence against the applicant, no fruitful purpose will be served by keeping the applicant in jail. Interest of the prosecution can be protected by putting stringent conditions on the applicant.

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

9. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Mohammad Jafar Mohammad Yasin, be released on bail in Crime No.463/2022, registered with Police Station Arvi, District Wardha, for the offences punishable under Sections 302, 397, 364, 120-B, 201, 411 read with Section 34 of the Indian Penal Code, 1860, in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (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 him/her from disclosing such facts to the Court or any Police Officer.
- (v) The applicant shall maintain law and order.
- (vi) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.
- (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 application is disposed of in the above terms.

(Anil L. Pansare, J.)