

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

CRIMINAL APPLICATION (BA) NO.132/2023

Dhanashree wd/o Sachin Deshmukh .vs. State of Maharashtra

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Advocate assisted by Mr. S. G. Joshi,
Advocate for applicant.

Mr. I. Damle, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 17, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant is arrested in Crime No.553/2022, registered with Police Station, Digra, District Yavatmal for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, 1860.

2. Briefly stated the case of the prosecution is that the applicant is working as Forest Guard. She is wife of Sachin (since deceased). She had an extra marital affair with Shivam Bachle, the co-accused. The accusation is that She and Shivam have committed murder of Sachin. The evidence in this case is only in the form of last seen together theory.

3. The first such evidence is of landlady Kesharbai Kakad. She states that the applicant and Sachin were residing in the rented room since November-2020. On 30.07.2022, Sachin and applicant were in the room. On 31.07.2022 at about 12:00 noon, Sachin and applicant went out on the two wheeler

belonging to the applicant. She was carrying a bag. They did not return on that day. On 01.08.2022, at about 07:00 a.m. the witness found that the two wheeler of applicant was parked outside the compound. Sachin and applicant were however not present in the room and that the room was locked. In the afternoon, the witness saw applicant walking towards the room. She parked her two wheeler in the compound and went to the room. At about 01:00 p.m., applicant came out with a travel bag and requested the son of the witness to drop her to the bus stand, which he did. In the evening, applicant called the witness's son and informed him that Sachin did not return home and that her father in law i.e. Sachin's father will be lodging missing report. Later on, she (the victim) came to know through the newspaper that Sachin has been murdered by the applicant and Shivam. Similar is the statement of son Rupesh.

4 Learned A.P.P. has drawn my attention to the statement of Savita. Her statement indicates that applicant was her neighbour. On 29.07.2022 at about 08:00 p.m. the applicant left for night duty. At about 11.00 p.m. Sachin came to his room. The room was locked. Therefore, Sachin came down to the witness' room and asked whether applicant has left for night duty. The witness said yes. Thereafter Sachin stayed there for some time. On 30.07.2022 at about 04.00 to 05.00 a.m., she (the witness) saw that applicant and Sachin were quarreling outside the house. She advised them not to quarrel outside and go to their room. Thereafter they went to the room. On 31.07.2022, applicant and Sachin left the room. Later on, she came to know that Sachin has been murdered by applicant and Shivam.

5. Learned A.P.P., by relying to the above statements, is suggesting that applicant and Sachin were not in good terms. He further submits that applicant was insisting for divorce from Sachin but he was not willing to give divorce. Learned A.P.P. has then referred to the statement of Bharti Joshi. She states that in the afternoon of 31.07.2022, she had seen Sachin and applicant in the garden. The witness was present there for some medical camp. Learned A.P.P. then referred to the statement of one Ramesh Barsagade. He is a Forest Labour. He states that he was in the unit of the applicant. The applicant was never given night duty. Learned A.P.P. submits that the applicant on the pretext of night duty, used to go out and meet Shivam. When inquired as to whether there is any witness who has seen the applicant and Shivam together at any point of time, learned A.P.P. answered in the negative.

6. This is what is so called last seen together theory. Mr.Mardikar, learned Senior Counsel has rightly pointed out that the case of the prosecution, even if accepted at the face value could, at the most, indicate that the applicant and Sachin were together till the afternoon of 31.07.2022. The death of Sachin is caused by strangulation, as reported in the post mortem report. Strangulation is allegedly done by scarf of the applicant which is said to have been destroyed. Thus, the prosecution could not recover the so called weapon used in the crime. Unfortunately, the probable time of death is not mentioned in the post mortem report. Thus, what transpires is that on 31.07.2022, the applicant and Sachin left the room at about 12:00 noon. They were seen together in the afternoon by Bharti Joshi. The landlord Kesharbai has seen, in the morning of 01.08.2022 at

07:00 a.m. that the vehicle of applicant was parked in front of her house. The applicant came back in the afternoon and again left the room at 01:00 p.m. In the circumstance and in the absence of probable time of death, which may be between evening of 31.07.2022 to the afternoon of 01.08.2022, it will be quite challenging for the prosecution to prove that except for the applicant and Shivam none else is responsible for the unfortunate death of Sachin. Nonetheless, it will be the matter of trial.

7. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is a Government servant and therefore possibility of her absconding is not likely. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

8. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

9. 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.

10. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Dhanashree Sachin Deshmukh, be released on bail in Crime No.553/2022, registered with Police Station, Digras, District Yavatmal for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code she executing P.R. Bond 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 her 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 regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.
- (vi) The applicant 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 application is disposed of in the above terms.

(Anil L. Pansare, J.)