

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

...

CRIMINAL APPLICATION (BA) NO. 191/2023

Vijay Kailas Thakare

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Khamgaon(Rural) Dist. Buldana

.. Respondent

.....
Mr. K. H. Anandani and Bhavin Suchak, Advocates for the applicant

Mr. S.S.Doifode, APP for Respondent
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CORAM: ANIL L. PANSARE, J.

DATED : 3rd April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 22.08.2022 in Crime No.286/2022 registered at Police Station Khamgaon (Rural), Dist. Buldana for the offences punishable under Sections 302, 392, 411, 413 and 414 of the Indian Penal Code.

2. Briefly stated the case of the prosecution is that FIR was lodged on 20.08.2022 by the husband-Janardhan of the deceased-Kamalabai, stating therein that his wife has been murdered by some unknown persons and that the jewellery on her person and cash of Rs. 23,000/- has been stolen from the house.

3. The learned counsel for the applicant submits that during the course of investigation, two persons, namely, Mangesh and Ashish were arrested. It is the case of the prosecution that these

two accused persons have committed the murder and have stolen the property. Both being juvenile, have been released on bail. The role of the applicant has been disclosed during the interrogation of these two accused. The role assigned to the applicant is that he has received Rs. 12,000/- out of the amount received by the co-accused, by selling stolen ornaments. The accused Nos.1 and 2 have handed over the stolen articles to Pavan and Vijay (the applicant) who, in turn sold it to Mohsin (the absconding accused). The applicant has received an amount of Rs. 12000/- as his share and others have received their share proportionately.

4. The learned APP submits that the amount of Rs. 12,000/- has been recovered at the instance of the applicant.

5. To my mind, if this statement is accepted at its face value, the question will be, who will depose before the trial Court that an amount of Rs. 12,000/- is the subject-matter of the crime. It is so because except for the disclosure of the role of the applicant during interrogation with the co-accused, there is no independent witness to this theory. Thus, the accused persons have stated before the police that the applicant has received Rs. 12,000/- as his share in the crime. Thus, there is no witness to identify the recovered amount to be the amount derived from selling stolen ornaments. That apart, the complicity of the applicant in commission of the murder does not find place through the statement of any witnesses.

6. Thus, the only allegation remains against the applicant is of getting share after selling the stolen articles. It will thus be quite

challenging for the prosecution to show the complicity of the applicant with the offences alleged. Nonetheless, the prosecution will get opportunity to put forth its version at the time of the trial. For the time being, the benefit will have to be extended to the applicant.

7. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. 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 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 and the attending circumstances, 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, the following order is passed :-

ORDER

(i) The application is allowed.

- (ii) Applicant- Vijay Kailas Thakare, be released on bail in Crime No.286/2022 registered at Police Station Khamgaon (Rural), Dist. Buldana for the offences punishable under Sections 302, 392, 411, 413 and 414 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/- with one surety 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.
- (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.]

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