

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

CRIMINAL APPLICATION (BA) NO.245 OF 2023
Vijay S/o Narayan Barapatre 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.

Shri M.V. Rai, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 3, 2023.

This is an application under Section 439 of the Code
of Criminal Procedure (Code).

2. The applicant has been arrested on 03.10.2022 in Crime No.1024/2022 registered with Police Station, Ramnagar, Chandrapur for the offence punishable under Sections 302 and 202 of the Indian Penal Code (for short, 'IPC').

3. The accusation against the applicant is that he has murdered his own daughter, who was 10 years old and was mentally retarded. The case is based on circumstantial evidence. The FIR has been lodged by Police Constable Sau. Bhavna Devtale. On 23.09.2022, the child was brought to the hospital by the applicant, his wife and some relatives for treatment, where she has been declared dead. Accordingly, death report was registered vide Merg No.106/2022 under Section 174 of the Code.

4. Learned APP has invited my attention to the postmortem report wherein it is mentioned that cause of death is due to strangulation. He has then invited my attention to the memorandum panchanama dated 05.10.2022 recorded under

Section 27 of the Indian Evidence Act wherein handkerchief is recovered at the instance of the applicant. The query report shows that death could be caused by the handkerchief.

5. Learned counsel for the applicant submits that merely on the aforesaid ground the applicant cannot be said to have committed murder of his own daughter. He has invited my attention to the statement of the wife of the applicant, who is mother of the deceased. Her statement is recorded under Section 164 of the Code. She states that the child was born on 13.06.2013. She was mentally retarded by birth. She was very dear to the applicant. She did not eat food without applicant. On 23.09.2022, she alongwith other congress workers had been for agitation against rise in petrol price. All were booked by the police and taken to police station. In the afternoon at about 1.00 pm, they were released. She took her phone and found missed call of the applicant so also another relatives. She called back the relative, to which she was informed that her daughter is not keeping well. She and her associates rushed to her house. The daughter was lying on the bed. The applicant asked everyone to take daughter to the hospital. Accordingly, the applicant, his wife and others removed the deceased to the hospital, where she was declared brought dead. Thus, the wife has not blamed the applicant for the murder, rather in a way has exonerated him. Further, the applicant has also taken efforts to take his daughter to the hospital.

6. At this stage, learned APP has invited my attention to another statement recorded on 06.10.2022 of the wife of the applicant. She stated that on 03.10.2022 the police had been to

their house. They took applicant in confidence, upon which the applicant has disclosed to them in the presence of the wife that the applicant has committed murder out of anger. This statement being recorded before the police and at the instance of police, is not admissible in evidence, under Section 25 of the Indian Evidence Act. Thus, it is challenging for the prosecution to show complicity of the applicant with the crime.

7. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is staying since long at the address given in the application.

8. In the circumstances and considering the peculiar facts of the case and the evidence against the applicant so also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. 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 learned trial Judge shall not get influenced with the above observations.

10. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Vijay S/o Narayan Barapatre, be released on bail, in Crime No.1024/2022 registered with Police Station, Ramnagar, Chandrapur for the offence punishable under Sections 302 and 202 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹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 regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) 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.

Wagh

JUDGE