

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

...

CRIMINAL APPLICATION (BA) NO. 264/2023

Wasim s/o Shakil Qureshi

..Applicant

versus

The State of Maharashtra

Th: Its PSO Allipur, Dist. Wardha

..Respondent

.....
Mr. A.M. Jaltare with Mr N D Dawda, Advocate for the applicant

Mr. M.J.Khan, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 11th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 20.03.2022 in Crime No.178/2022 registered with Police Station, Allipur Dist. Wardha, for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act.

2. Briefly stated, the case of the prosecution, as could be seen from the FIR, is that applicant and co-accused have committed the murder of one Vaibhav Arun Khadse. Vaibhav was addicted to liquor. He was in relationship with the co-accused Pushpa. At times, he used to reside with her. In the year 2020, Vaibhav was arrested on the allegation that he committed theft at the house of Pushpa. He was released on bail and used to meet Pushpa at her house. The applicant was also in relationship with Pushpa. Vaibhav enquired with Pushpa as to why did she enter into relationship with applicant. Thereupon the

applicant has assaulted Vaibhav and threatened him of elimination. On 19.03.2022 the police made a phone call to the informant and stated that foul smell is emanating from the house of Pushpa. The door was locked which came to be opened. The body of Vaibhav was lying in the partly decomposed state. The informant identified the body to be of Vaibhav.

3. The learned counsel for the applicant submits that there is no direct evidence against the applicant. As against, the learned APP submits that Pushpa has given an extra judicial confession before one Priti Ingale, who is niece of Pushpa. Her statement indicates that on 17.03.2022 Pushpa came to her (witness's) house. She was not keeping well and, therefore, she took her to the Doctor. Along with medicine saline was given to Pushpa. On 19.03.2022 someone from the village called Pushpa. The witness noticed that Pushpa was feeling uneasy and, therefore, she enquired Pushpa as to what has happened, to which she responded that on 15.03.2022 Vaibhav had been to her house and that the co-accused has by means of sword, slit the throat of Vaibhav. She further stated that thereafter both i.e. Pushpa and the applicant locked the door and went to Allipur at the house of the applicant and stayed there till 17.03.2022. Thereafter, the applicant proceeded to Amravati and Pushpa to Allipur.

4. When enquired, the learned APP submits that the investigating officer has not recorded the statement of the villagers of Allipur to show that Pushpa and the applicant stayed there from 15th to 17th March 2022. However, he submits that sword has been recovered at the instance of the applicant. The applicant has thrown the word in

the well. The question however will be to connect the sword with the crime. It is so because no one has seen the incident and there is no witnesses to identify the sword to be the weapon by which the applicant has cut the throat of the deceased. Further, there are no witnesses to show that the applicant, co-accused and the deceased were in the house at the relevant time. The overall circumstances are indicative of involvement of the applicant and the co-accused in the crime. However, the prosecution will have to convert suspicion into proof while leading evidence before the trial court. At this stage, considering the nature of evidence, in my considered view, further incarceration of the applicant is not justified.

5. When enquired, the learned counsel for the applicant submits that couple of cases have been registered against the applicant but for petty offences like (1) u/ss 279, 304A, vide Crime No.167/2017 registered at Ralegaon Police Station, Yavatmal; (2) u/ss 452, 323 and 506 of the IPC vide Crime No.54/2018 registered at Allipur Police Station; and (3) u/s 65E of the Bombay Prohibition Act vide crime No.55/2017 registered at Allipur Police Station.

6. The law on this point is well settled. Merely on the ground of criminal antecedents, the relief cannot be refused, in the absence of cogent evidence against the persons like the applicant.

7. 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 – Wasim s/o Shakil Qureshi, be released on bail in Crime No. 178/2022 registered with Police Station, Allipur Dist. Wardha, for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act, on he 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 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 regularly attend the court and co-operate 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.

(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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