

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

CRIMINAL APPLICATION (BA) NO. 278/2023

Sanjay alias bhimsingh Hiralal Balavane .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. A. J. Thakkar, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 25, 2023.

Heard.

2. This is an application under Section 439 of the Code of Criminal, 1973. The applicants have been arrested on 29.09.2022 in Crime No.239/2022, registered with Police Station, Dhad, District Buldhana for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.

3. The FIR has been lodged by one Gedusingh Bhawlal Pakal, the son in law of Dhanabai (Since deceased). Hiralal and his two sons (present applicants), have allegedly committed murder of Dhanabai. Agricultural fields of Dhanabai and Hiralal are adjacent to each other. On 19.07.2022, another son of Hiralal namely Gajanan, expired due to illness. The death, however, has been attributed to Dhanabai with the allegation that she had performed black magic (bhanamati) over him. Hiralal and applicants were annoyed with Dhanabai for her alleged role in the death of Gajanan. On 28.09.2022, Dhanabai was not traceable. Her body was found floating in the well

situated in the agricultural field of Shamrao Raut. The informant identified the body. He noticed that there was injury on her forehead and blood was oozing.

4. The prosecution case is based on the circumstantial evidence. Learned A.P.P. has invited my attention to the statement of one witness Harchand Balawane. He states that there was dispute between family of Hiralal and Dhanabai on the count that Hiralal's son has expired because of the black magic performed by Dhanabai. On 28.09.2022, the witness was in his field. The agricultural fields of Hiralal and Dhanabai are nearby. He saw Hiralal was doing agricultural work in his field. Dhanabai was also present in her field at about 02:00 to 03:00 p.m. The witness and the labourers working in his field left by 06:00 p.m. Later on, he came to know that body of Dhanabai was found floating in the well. This statement has been relied upon by learned A.P.P. in support of his contention of last seen together theory.

5. To my mind, the statement only indicates that Hiralal was present in his field and Dhanabai in her field. The witness has noticed presence of Dhanabai in her field at about 02:00 to 03:00 pm. The witness left his field at 06:00 p.m. He does not say that at that time Hiralal and Dhanabai were also present in their respective fields.

6. Learned A.P.P. submits that the field of Shamrao is located adjacent to the field of Dhanabai and that the well is located in the field of Shamrao. Thus, it is suggested that the body of Dhanabai is found in the well situated in the adjacent.

7. It is, however, nobody's case that Dhanabai and Hiralal were found together near the well.

8. Learned A.P.P. then referred to statement of Fakirsingh. His statement also indicates that he was aware that there was dispute between Dhanabai and Hiralal. On 28.09.2022, at about 08:30 p.m., when he was standing near Kirana shop in the village, the people were saying that Dhanabai's body was found in the well belonging to Shamrao. At that time, the applicants came there on motorcycle and said that they have taken revenge against Dhanabai.

9. This statement, however, will only shift the needle of suspicion towards the applicants but nothing more.

10. Learned A.P.P. has then relied upon statement of Chaya, daughter of Dhanabai. She states that Hiralal and present applicants had threatened Dhanabai of dire consequences and that the said fact was informed to the witness by Dhanabai.

11. This statement is indicative of the fact that the witness had not heard the threat personally but has learnt the same from her mother.

12. Learned counsel for the applicants has correctly argued that the aforesaid statement would only create suspicion against the applicants and nothing more. It is nobody's case that the applicants were seen near the field of Dhanabai much less the well from where Dhanabai's body was recovered. The case of the prosecution will only show that Hiralal and Dhanabai were seen in their respective fields at the relevant time. Thus, the evidence against the applicants, prima facie, appears to be weak.

13. When inquired of antecedents, learned counsel for the applicants submits that there are no criminal antecedents. The applicants are 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.

14. In view of above and considering the peculiar facts of the case and the nature of evidence against the applicants 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 applicants to appropriate terms.

15. 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.

16. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant no.1 – Sanjay alias Bhimsingh Hiralal Balavane and applicant no.2 – Ranjeetsingh Hiralal Balavane, be released on bail in Crime No.239/2022, registered with Police Station, Dhad, District Buldhana for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, on they executing PR. Bond in the sum of Rs.50,000/- each with one or two sureties each in the like amount.

(iii) The applicants shall, at the time of execution of bond, furnish their addresses 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 applicants 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 applicants shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicants 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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