

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

CRIMINAL APPLICATION (BA) NO.287 OF 2023

Raju alias Shantiram Eknath Folane

Vs.

State of Maharashtra, through PSO, PS,Raipur, Dist. Buldhana

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

Court's or Judge's orders.

Shri Anil Mardikar, Sr. Advocate a/b Shri V.R. Deshpande,
Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 25, 2023.

This is an application under Section 439 of the Code of Criminal Procedure (for short, 'Code'). The applicant has been arrested on 16.01.2023 in Crime No.252/2022 registered with Police Station, Raipur, District Buldhana for the offences punishable under Sections 302, 201, 202 and 203 of the Indian Penal Code.

2. Briefly stated the prosecution case is that there was dispute between Eknath (deceased) and his sons regarding agricultural land. The applicant is the elder son of Eknath. The another son of Eknath and wife of the deceased are the co-accused. The deceased was alcoholic. He used to reside in his agricultural field though having house in the village. The accused persons used to reside in the house in village.

3. Having heard both sides and having gone through the statements of witnesses, it appears that the wife of the

deceased, on 31.10.2022, lodged report with police station stating therein that on 31.10.2022 at about 11.00 pm, her son Shantiram (applicant), Vijay, elder daughter Sunita and she herself were at home. Her husband had been out of town for some work. At about 12.00 hours in the night, the neighbour Sandeep informed her on phone that someone has set on fire the soyabean crop belonging to the deceased and the accused persons. The wife of deceased and two sons rushed to the field. They stayed at agricultural field till 4.00 am. They came back. In the morning at about 6.00 am, when Sunita got up, she noticed that deceased was sleeping in the adjoining room. She made an attempt to wake him up but he did not respond. Thereafter, they came to know that deceased has expired. Accordingly, report under Section 174 of the Code has been lodged.

4. The sister of deceased has, however, a different story. Her statement is recorded on 04.11.2022. She states that on 26.10.2022 the deceased had been to her house. He said that the applicant is harassing him (deceased) for getting agricultural land in his name. The deceased had informed her that the applicant has even given life threats. The deceased then said that this Diwali may be his last Diwali.

5. Thus, in a way on 26.10.2022, the deceased has informed his sister that he may be eliminated by the elder son i.e. applicant.

6. On 31.10.2022, the witness was informed that her

brother has expired. She came to brother's village and enquired with the applicant and co-accused as to how did her brother expire. To which they did not give any satisfactory answer. The witness also noticed marks of injuries on the person of the deceased and therefore suspected roles of applicant and the co-accused in the crime.

7. Learned APP submits that the stick used as weapon in the crime has been recovered at the instance of the applicant. Thus, it is suggested that the applicant and co-accused have assaulted the deceased by means of the aforesaid stick. He further invited my attention to the statement of Gayabai Muradkar, who is another sister of the deceased. She has stated that the dispute between the deceased and the accused persons occurred on the count of agricultural land. The deceased used to reside in the agricultural land. The accused used to reside in the cement concrete house located in the village. She has also stated that when she came to know of the death of her brother (deceased), she enquired with the accused about the cause of death but they gave evasive answers.

8. Mr. Mardikar, learned senior counsel for the applicant has rightly pointed out that there is no direct evidence against the applicant or for that purpose against the accused persons. The only evidence is the so called circumstantial evidence, which does not really show complicity of the applicant with the crime. It is well settled that suspicion

howsoever strong cannot take the place of the proof.

9. The theory putforth by the prosecution is of circumstantial evidence. This will be tested in the trial. *Prima facie*, there appears that chain of events, to arrive at the inference that none else except, the applicant is responsible for the offence, is missing.

10. What transpires from the submissions made by the both sides is that there had been dispute between the deceased and the accused persons. The statement of one of the sisters also indicates that the family own 11 acres of land, of which 5 acres, was in the name of deceased and the remaining was in the name of the accused persons. Thus, it is not the case that the entire land was in the name of the deceased. In any case, after his death the agricultural land would have been inherited by the accused persons. Thus, there has to be certain reasons that in the lifetime of the deceased, the accused were having desire of transferring the land in their names.

11. Be that as it may, the fact remains that there is no direct evidence in this case. The prosecution will get opportunity to putforth its case which of course will be tested by the defence through examination.

12. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned senior counsel

for the applicant submits that there are no criminal antecedence against the applicant.

13. In view of above and considering the nature of evidence against the applicant coupled with 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.

14. The observations made in this order are prima facie and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

15. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Raju alias Shantiram Eknath Folane, Crime No.252/2022 registered with Police Station, Raipur, District Buldhana for the offences punishable under Sections 302, 201, 202 and 203 of the Indian Penal Code, on he executing 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 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. 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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