

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

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CRIMINAL APPLICATION (BA) NO. 294/2023

Sandeep @ Guddu s/o Rajkumar Barlewar .. Applicant

versus

The State of Maharashtra

Th: Its PSO PS City Chandrapur, Dist. Chandrapur .. Respondent

.....
Mr. C.R.Thakur, Advocate for the applicant

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

DATED : 19th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 15.06.2022 in Crime No.327/2022 registered with Police Station, City Chandrapur, Dist.Chandrapur, for the offences punishable under Sections 302, 201, 120-B of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that one Javed Siddique, Police Constable, has lodged the report stating that while he was on patrolling duty, he received a call from Control Room informing that a dead body is lying in the premises of Shyamaprasad Mukherjee Library. He came to know that one person named Arif had informed the Control Room about the said fact. The informant then contacted Arif and verified the report. Thereafter, he along with some police officials went to the spot. He proceeded to the terrace of the dilapidated building known as Shikshak Bhawan and found one dead body. The deceased had suffered multiple injuries viz. on head, face and other parts of the body.

It was noticed that broken liquor bottles were lying near the body. One wrist watch was also found there. Upon enquiry, it was revealed that the name of the deceased was Rahul Vikas Thak. The investigation commenced. On secret information, the accused No.1 -Vaibhav Dongre (2) Kartik Bawne and (3) Sandeep Barlewar (the present applicant) came to be arrested on 15.06.2022. They have allegedly confessed the crime. According to the prosecution, wallet and mobile phone was recovered at the instance of accused No.1. The evidence is in the form of SDR and CDR call details which disclosed the presence of the applicant at the place of the incident.

3. The learned counsel for the applicant has rightly argued that there is no direct evidence. It appears that the place under question is a secluded place, which is near Shyamaprasad Mukherjee Library. It further appears that locals of Chandrapur used to visit the place for drinking liquor. The building is in dilapidated condition which was earlier known as Shikshak Bhawan. My attention is invited to the statement of one of the witnesses, namely, Sk.Arif Sk.Khalid who states that on 14.06.2022 he had been to the said building with his friends for consuming liquor which they carried with them. While they were climbing the staircase, three persons were coming down, one was wearing whitish white colour stripes shirt, second a red T-shirt and the third was wearing whitish shirt. There occurred a quarrel between these witnesses and those persons. Those three persons ran away. This witness and his friend Kartik then proceeded to terrace where they found two persons were drinking liquor. Again, there occurred a quarrel between them for no reason. Kartik then proceeded to one side for attending nature's call where, to his utter dismay, he found one body

covered by plastic tapes; blood was oozing from his head. He called the witness. They noticed that apart from the body, there were broken liquor bottles. These two persons so also the other two who were drinking liquor then ran away. Similar is the statement of Kartik.

4. The learned APP submits that these witnesses have identified the accused persons to be the persons who were coming down from the terrace. He further submits that the CDR details indicate that these persons were at the spot at the relevant time.

5. Having given thoughtful consideration to the submissions made by both sides, I am of the view that even if the case of the prosecution is accepted to be true on its face value, it will be quite challenging for the prosecution to connect the applicant with the crime. It is so because it is nobody's case that these witnesses have seen the applicant or co-accused committing the crime. What is seen is that the applicant and co-accused were coming down. It is nobody's case that any one of them were having weapon in their hands. That apart, the body was wrapped in white tapes. Thus, it appears that murder was already been committed.

6. At this stage, the learned APP submits that the allegation is that the accused persons have, after committing murder made, an attempt to dispose of the body by throwing it at a secluded place. This submission however is without any substance as *sans* evidence. Had it been true that that applicant and co-accused have disposed of the body, the two persons who were drinking liquor on the terrace, would have noticed some movement on the terrace. They have not seen such

suspicious movements. Thus, the inference drawn by the prosecution that the applicant and co-accused have disposed of the body after committing murder suffers from conjectures, surmises and guesswork. Nonetheless, the prosecution will get opportunity to put forth its version during trial which, of course, will be tested by defence in cross-examination. However, considering the nature of evidence against the applicant, his further incarceration in the jail is uncalled for. Moreover, there is nothing to be recovered from 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 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 – Sandeep @ Guddu s/o Rajkumar Barlewar, be released on bail in Crime No.327/2022 registered with Police Station, City Chandrapur, Dist.Chandrapur, for the offences punishable under Sections 302, 201, 120-B of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/- 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 adjournment, 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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