

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

CRIMINAL APPLICATION (BA) NO.308 OF 2023
Vijay Narasimulla Bhashanwar 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 V.D. Darne, Advocates for applicants.
Shri S.M. Ghodeswar, APP for non-applicant/State.
Shri M.L. Vairagade, Advocate for Assist the Prosecution.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 21, 2023.

This is an application under Section 439 of the Code of Criminal, 1973. The applicant has been arrested on 16.05.2022 in Crime No.249/2022, registered with Police Station, Parwa, District Yavatmal for the offence punishable under Sections 302, 120(B), 201 read with Section 34 of the Indian Penal Code.

2. Briefly stated it appears from the prosecution's case that the applicant and three others have committed murder of one Anil Ochalwar. The wife of deceased Sonam has lodged report with police station stating therein that her husband was social worker. He had formed *Gav Samasya Niwarnan Parva* Whatsapp Group (The Village Grievance Redressal Forum, Whatsapp Group). The informant on the advise of the deceased had filed an application under Right to Information Act with the Forest Department seeking certain information. The employees of the Forest Department were

annoyed by the information so sought. On 15.05.2022, when the deceased was in his house one Sandip Deshmukh called him on phone. The husband of the informant was taking in low tone. At about 00.30 hours Danish Sheikh (co-accused) came to the house. Thereafter, the deceased went out with Danish by saying that they have to attend a meeting with Saheb. The next day at about 7.00 am one Jogabai Bhojwar informed her (informant) that body of unknown person is lying near Mahadeo Temple. The informant went to the spot and found that body was of her husband. She found stab injuries on his stomach, on chest and on neck so also found that throat was slit. Accordingly, she lodged a report against Niketan Khadse, Vijay Bhashanwar, Sandip Deshmukh, Danish Sheikh, Raju Ballurwar, Chandrakant Espade, Sodgir, Bapu Kakade, Sanjay Arewar and others.

3. According to the prosecution, the applicant is a conspirator. There is long standing dispute between the applicant and the family of the deceased. As such they are neighbour but there are complaints and cross-complaints amongst themselves. The application is opposed by the learned APP on the ground that if the applicant is released on bail, the applicant may pressurize the informant and tamper with the prosecution witnesses. Further, he submits that the offence is serious. One case has been registered against the applicant bearing Crime No.358/2018. The allegation is that the applicant has outraged the modesty of the wife of the deceased and therefore offence punishable

under Sections 354, 504, 506 read with Section 34 of the IPC came to be registered. According to prosecution, the applicant has threatened informant to withdraw the FIR and report to that effect has been lodged on 02.03.2022 vide NC No.114/2022. The applicant was aggrieved by the information sought by the informant from the Forest Department. According to learned APP, the information sought would disclose that the Forest Department had deposited labour amount of MREGS in the account of the applicant. The deceased was all set to disclose the fraud committed by the officials of the Forest Department in connivance with the applicant. According to the prosecution, the applicant therefore had hired contract killers for eliminating the deceased and successful done so.

4. Having heard both sides, what transpires is that there is no direct evidence against the applicant. Danish, who had been to the house of the informant and who accompanied the deceased, when he left to attend the meeting, is the one who has allegedly assaulted the deceased by means of knife. As such no one has seen Danish assaulting the deceased but then the knife has been recovered at his instance.

5. The learned counsel for the applicant submits that the deceased was RTI activist and that many persons were aggrieved by his activities because he used to blackmail them. Thus, it is suggested that possibility of some other persons eliminating him cannot be ruled out. He further

submits that there is no direct evidence against the applicant.

6. There appears substance in the submissions made by the learned counsel for the applicant to the extent that there is no direct evidence against the applicant. The story putforth by the prosecution that some information was collected by the deceased against the applicant is not supported by any cogent evidence inasmuch as no one has lodged the complaint either against the officials of the Forest Department or against the applicant of misappropriation of the amount. If the informant has collected the informantion, though allegedly at the behest of the deceased, the informant could have lodged the report on the basis of information so collected. Having not done so till today, it will be difficult to connect the applicant with the crime only on the basis that the informant had collected some information against the officials of the Forest Department disclosing that some amount was deposited in the account of the applicant. The allegations leveled against the applicant are based on suspicion and not the proof.

7. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

8. 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.

9. 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.

10. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Vijay Narasimulla Bhashanwar, Crime No.249/2022, registered with Police Station, Parwa, District Yavatmal for the offence punishable under Sections 302, 120(B), 201 read with Section 34 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 enter into the territorial jurisdiction of Police Station, Parwa, District Yavatmal

pending trial.

(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 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.

(vii) The applicant shall maintain law and order.

(viii) 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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