

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

CRIMINAL APPLICATION (BA) NO. 332 OF 2023

Rupesh Suresh Yengandhalwar

..VS..

State of Maharashtra through P.S.O, Police Station Aheri, Dist. Gadchiroli

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

Court's or Judge's orders

Mr. S.V. Sirpurkar, Advocate for applicant.

Mr. S.M. Ghodeswar, Additional Public Prosecutor for non-
applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 19, 2023

Present Application under Section 439 of the Code of Criminal Procedure is filed by the applicant for grant of bail in connection with Crime No.375/2022, registered at Police Station, Aheri, District Gadchiroli for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The applicant is arrested on 19.08.2022.

3. The applicant is arrested as crime is registered against him and co-accused on an allegations that on 19.08.2022 the informant was on patrolling duty along with his other colleagues. He was present at Beghar Colony for the said patrolling duty, at the relevant time, he saw the co-accused and one another boy coming towards Beghar Colony. The informant restrained them

and made inquiry with them and it reveals to him that the mother of the co-accused is not well therefore, he went along that girl at her house and witnessed that deceased namely Nirmala Chandrakant Aatram was lying in the house in a dead condition. He immediately shifted the deceased to the hospital. On inquiry, it reveals to him that co-accused Urmila Aatram with the assistance of the present applicant has committed murder of her mother. On the basis of said report, police have registered the offence against the present applicant also.

4. As per the contention of the present applicant, merely on the basis of Confessional Statement of the co-accused, he is implicated in the alleged offence. There is no direct or circumstantial material in the nature of the evidence to connect him with the alleged offence. In fact, the present applicant is involved in the alleged offence as there was a love affair between him and the co-accused. Now investigation is completed and charge-sheet is filed. Considering no *prima facie* material is against the present applicant, his further custodial interrogation is not required and no purpose will be served by keeping him behind the bar and prays for bail.

5. Said application is strongly opposed by the State on the ground that present applicant and co-accused in furtherance of their common intention as the deceased was not in favour of the love affair of present applicant and other co-accused, both have committed the murder

of the deceased. Now investigation is completed and charge-sheet is filed however, if applicant/accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

6. Heard learned Counsel Mr. S.V. Sirpurkar for the applicant. He submitted that on perusal of the charge-sheet, except the Confessional Statement of the co-accused, no material is on record to show the involvement of the present applicant in the alleged offence. It is well settled that Confessional Statement of the co-accused is not admissible to show the involvement of the present applicant in the alleged offence. He further submitted that even considering the allegations as it is, now investigation is completed, charge-sheet is filed and bail is rule and jail is exception. He further relied upon the decision of the Hon'ble Apex Court in the case of *Dattaram Singh Vs. State of Uttar Pradesh, (2018) 3 SCC 22* wherein it is held that, to put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody, there are several reasons for this including maintaining the dignity of an accused person, however poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons* and has further held and

reiterated that “Bail is rule jail is exception”. He further submitted that the applicant who belongs to the respectable family, if he has kept behind bar, his entire career will tarnish. The applicant is young man and he is only sole bread earner in his family. Considering the allegations against him, his further custodial interrogation is not at all required and no purpose will be served by keeping him behind bar.

7. Per contra, learned APP vehemently submitted that during the investigation not only the statement of the co-accused but the statements of the other witnesses shows the involvement of the present applicant in the alleged offence. The mother of the co-accused is strangulated. The death of the deceased is due to the strangulation. Thus, considering the *prima facie* material against the present applicant, Application deserves to be rejected.

8. Having heard both the sides and perused the investigation papers. The First Information Report is lodged on the basis of report lodged by Yashwant Sopanrao Gutte, who is the Police Constable. As per the allegations when he was on a patrolling duty, he suspected the co-accused who was along with one Nikhil Ajay Khobragade. On inquired with the co-accused, she narrated that her mother is suffering from the mental illness and being fed with mother, she went outside the house. It is further revealed that her mother was

harassing her. During interrogation with the said girl, she further discloses that her mother is dead in her house and therefore, this informant visited the house and witnessed that the deceased is lying in a dead condition. Immediately he reported to the Police Station. During investigation, the Confessional Statement of the co-accused is recorded and she narrated about the involvement of the present applicant. Admittedly, the Confessional Statement of the co-accused is not admissible.

9. During investigation, the Investigating Officer has also recorded the relevant statements of the witnesses. During the relevant statements of the witnesses, niece of the deceased discloses about the previous disputes between the deceased and co-accused. From her statement it reveals that there used to be quarrel between deceased and the co-accused as she was having love affair with the present applicant. The deceased is also witnessed present applicant and the co-accused in a compromising position and therefore she assaulted the co-accused. Thus, from the statement it reveals that there was no cordial relations between the co-accused and her mother, who died in the said incident. The Investigating Officer has also recorded the statement of Nikhil Ajay Khobragade, who found along with the co-accused during the night hours. From his statement it reveals that in the intervening night of 18.08.2022 to 19.08.2022, the present applicant who is his room-met

was also present in the room and at about 05.00 to 05.30 pm. present applicant went outside the room and not returned back up to 10.00 pm. therefore, he went to sleep, when he was in sleep at about 03.00 am. present applicant woke up him, he came along with co-accused Soni Alias Urmila and therefore, he went along with the Urmila at the request of the present applicant to drop her at her house. At the relevant time they were restrained by the informant. Thus from the statement of this Nikhil Khobragade, it reveals that present applicant was not at his room up to 03.00 am. in the morning when the alleged incident has taken place in the intervening night of 18.08.2022 and 19.08.2022. There are other statements also recorded by the Investigating Officer showing that there was no cordial relations between the deceased and co-accused on account of a relationship between the co-accused and the present applicant.

10. The consideration while deciding the bail application are that the Court has to see the seriousness of the offence alleged and material collected during the investigation. It is further necessary to see whether the accused would be available for trial and there is any likelihood of tampering the witnesses.

11. Considering the allegations in the present case, the old lady is strangulated when she was alone in the house. The Postmortem Report shows that ligature marks were found around the neck of the deceased and because of

the Cardiorespiratory Arrest due to Asphyxia due to strangulation. The *prima facie* material that the statement of the Nikhil Khobragade sufficiently shows that present applicant was not present at the room where he was residing along with said Nikhil Khobragade. His statement further reveals that present applicant returned at room at about 03.00 am. along with the co-accused. Thus, *prima facie* material is collected during the investigation to show that present applicant was along with the co-accused in the intervening night of 18.08.2022 to 19.08.2022. Admittedly, the death of the deceased is caused in inside the house. The involvement of the present applicant and the role of the present applicant in the alleged incident is a matter of evidence adduced before the Court. At this stage *prima facie* material showing the presence of the applicant with the co-accused during the intervening night when the alleged incident has taken place which sufficiently shows the involvement of the present applicant in the alleged incident.

12. At this stage, learned counsel for the applicant by considering that the Court has not inclined to grant bail, requested for permission to withdraw the Application with liberty to file afresh under change in circumstances. In view of the statement, the learned counsel for the applicant is permitted to withdraw the Application with liberty to file afresh under change in circumstances.

13. The Criminal Application is disposed of as withdrawn.

(URMILA JOSHI-PHALKE, J.)

Kirtak