

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

CRIMINAL APPLICATION (BA) NO. 435/2023

SAURABH S/O. PRAKASH HIWRE

VS

STATE OF MAH. THR. PSO, PS SHEGAON, BU. DIST. CHANDRAPUR.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr A.C. Jaltare, counsel for applicant.

Mr I.J.Damle, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/07/2023.

1. Heard.
2. The present application is preferred by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with crime No. 295/2022 registered with Police Station Shegaon Bu, District Chandrapur for the offences punishable under Sections 302, 404 and read with Section 34 of the Indian Penal Code. The applicant is arrested on 14/11/2022.
3. The accusation against the present applicant is that he has committed the murder of the deceased Tulshiram Tukaram Mahakulkar. The crime is registered initially against the unknown person on the basis of a report lodged by Gajanan Mahakulkar. During the

investigation, the investigating officer arrested the present applicant, on the basis of the statement of the witnesses, which reveals that the present applicant and the deceased used to consume liquor together, and therefore, suspicion was raised that the present applicant has committed the murder of the deceased. During the investigation, the investigating officer has also recorded the memorandum statement of the present applicant, and at the instance of the present applicant, the cash amount of Rs.1,500/- was recovered.

4. As far as the contention of the applicant, merely on suspicion he was arrested. There is no direct evidence or circumstantial evidence to connect him with the alleged offence. As far as recovery of Rs. 1,500/- is concerned which does not connect the present applicant with the alleged offence. Now, the investigation is completed and charge sheet is filed and his further custody is not required. No purpose will be served by keeping him behind bar.

5. The said application is strongly opposed by the State on the ground that investigation papers reveal that the present applicant used to consume liquor with the deceased, and there was some money transaction between them and on that count, the present applicant

has committed murder of the deceased. Considering prima-facie material, the application deserves to be rejected.

6. Heard learned counsel for the applicant. He reiterated the contention and submitted that except for the memorandum statement of the present applicant which shows that the amount of Rs.1500/- is recovered, there is absolutely no material to connect the present applicant with the alleged offence. Now, he is in jail since 14/11/2021. The Investigation is completed and charge-sheet is filed, no purpose will be served by keeping him behind bar

7. Learned APP reiterated the contention and opposed the application on the ground that crime committed by the present applicant is of serious nature, if he is released on bail, he will tamper the prosecution evidence.

8. Having heard both the sides. On perusal of investigation papers, admittedly, the crime is registered against an unknown person. During the investigation, the only incriminating circumstance which is brought on record is his memorandum statement. On the basis of which, the amount of Rs.1500/- is seized from the present applicant. As far as the monetary transaction between the applicant and the deceased is concerned,

no witness come forward during the investigation to show that there was any dispute between the deceased and the applicant on account of said monetary transaction. Except the statement under Section 27 of the Indian Evidence Act, there is absolutely no material to connect the present applicant with the alleged offence. As far as the statement of the witnesses is concerned it also does not show any connection of the present applicant with the incident of the deceased.

9. At this stage, the material which is collected during the investigation shows that prosecution only relied upon the statement of the accused under Section 27 of the Indian Evidence Act. Considering that, the applicant is for considerable period behind the bar. Considering the nature of material which is collected during the investigation, the applicant has made out the case to grant him bail. Accordingly, I proceed to pass following order:

- a) Criminal Application is allowed.
- b) The applicant – Saurabh s/o Prakash Hiwre is released on bail in connection with crime No. 295/2022 registered with Police Station Shegaon Bu, District Chandrapur for the offences punishable under Sections 302, 404 and read with Section 34

of the Indian Penal Code, on executing P.R.
Bond of Rs. 25,000/- with one solvent surety
of like amount.

- c) The applicant shall furnish his cell phone number and address with address proof.
- d) The applicant shall attend the concerned Police Station as and when called.
- e) The applicant shall not induce, threat or promise any witness who are connected with the alleged offence.

Criminal Application is disposed of.

JUDGE