

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

CRIMINAL APPLICATION (BA) NO.462 OF 2023

Kiran s/o Govindrao Akhare

Vs.

State of Maharashtra through Police Station Officer, Mouda, Nagpur

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

Court's or Judge's orders

Mr. R. K. Tiwari, Counsel for applicant.
Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/06/2023

1. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.756/2022 registered with Police Station Mouda for the offence punishable under Section 302 and 203 read with 34 of the Indian Penal Code. The applicant is arrested on 09.12.2022.

2. The crime is registered on the basis of a report lodged by the sister of the deceased namely, Sheela Kuthe. The accusation against the present applicant is that there were illicit relations between the wife of the deceased and the present applicant and therefore, in furtherance of the common intention with co-accused Vidhya Wagh on 02.12.2022, the present applicant has committed the murder of the deceased

namely, Namdev Wagh. On the basis of the said report, police have registered the crime against the present applicant.

3. As per the contention of the applicant that he is not at all concerned with the alleged offence merely on suspicion, he is implicated in the alleged offence. There is no direct or circumstantial evidence against the present applicant to show his involvement in the alleged offence. Now, the investigation is completed and charge-sheet is filed. His further custody is not required and hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that the death of the deceased is caused due to the constriction of the neck. There were illicit relations between the present applicant and the wife of the deceased and the deceased should not be impediment to their relationship. They both have committed the murder of the deceased. The Investigation Officer has recorded the relevant statements of the witnesses and also collected the CDR reports which show the communication between the present applicant and another co-accused on the day of incident. Thus, *prima facie* material is against the present applicant and hence, the bail application deserves to be rejected.

5. Heard learned Counsel Mr. Tiwari, for the applicant. He reiterated the contention and submitted that the only material collected during the investigation against the present applicant is the statement of the wife of the present applicant. Which only shows that in the intervening night, the applicant received a phone call of the co-accused and her husband went to give water to the crop and after some time, he returned home. He further submitted that considering the nature of the material collected during the investigation, it reveals that merely on suspicion present applicant is implicated. Now, the investigation is completed and charge-sheet is filed. The applicant is in jail for a considerable period, no purpose will be served by keeping the present applicant behind bars and praying for bail.

6. Heard the learned APP Mr. Kadukar for the State. He reiterated the contentions and submitted that offence is of grievous nature, if the applicant/accused is released on bail, he will tamper with the prosecution evidence. The CDR reports and the statements of the witnesses are sufficient to connect the present applicant with the alleged offence and pray for the rejection of the application.

7. Having heard both sides. On perusal of the entire investigation papers, it reveals that initially accidental death was registered on the ground that the

deceased has committed suicide by hanging himself. After four days of the incident, sister of the deceased has lodged a report alleging that wife of the deceased had illicit relations with the present applicant and therefore, in further furtherance of their common intention, they have committed the murder of the deceased. During the investigation, the Investigation Officer has recorded the relevant statements of the witnesses. From the statements of the witnesses, it reveals that all the witnesses who are the family members of the deceased were having suspicion that there was illicit relationship between the wife of the deceased and the present applicant and therefore, they suspected that the death of the deceased is caused by the present applicant with the help of wife of the deceased. The statement of the wife of the accused is also recorded by the Investigating Officer which shows that in the intervening night, the applicant has received a phone call of the wife of the deceased and she called the deceased in the agricultural field to give water to the crop and after some time, her husband returned home. However, there is no material collected during the investigation to show that anybody has seen the co-accused when the present applicant together in the intervening night, either near the spot of incident or in the agricultural field. Thus, except the circumstance that deceased and the present applicant was having illicit relationship and the wife of the present applicant received a phone call of the co-accused, no

other material before the Court to ascertain the involvement of the present applicant in the alleged offence. Now, investigation is already completed, therefore, further custody of the present applicant is not required. The applicant is in jail for a considerable period. Considering the nature of the evidence collected during the investigation, no purpose will be served by keeping the present applicant behind bars for a further period. Accordingly, the present application deserves to be allowed. Therefore, I proceed to pass the following order.

(i) The application is allowed.

(ii) The applicant Kiran s/o Govindrao Akhare is hereby released on bail in connection with Crime No.756/2022 registered at Police Station Mouda, Nagpur, for the offence punishable under Sections 302 and 203 read with Section 34 of the Indian Penal Code, on executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. till conclusion of the trial.

(iv) The applicant shall furnish his cell phone number and address with the address proof.

(6)

54.ba.462.2023

(v) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate