

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

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CRIMINAL APPLICATION (BA) NO. 1128/2022

Piyush Damodar Panchbuddhe

.. Applicant

versus

1) The State of Maharashtra
Through its PSO, PS Pardi Dist. Nagpur.

.. Respondent

.....
Mr. R.M.Patwardhan, Advocate for the applicant
Mr. Vinod Thakre, APP for Respondent
.....

CORAM: ANIL L.PANSARE,J.

DATED : 10th January, 2023

PC:

Heard learned counsel for the respective parties.

2. The applicant-Piyush has filed the instant application under section 439 of the Criminal Procedure Code. The applicant has been arrested on 06.09.2021 in connection with Crime No. 476/2021 for the offences punishable under sections 302,323, 447 120B read with Section 34 of the Indian Penal Code, registered at Police Station Pardi, Nagpur.

3. The co-accused in the matter has already been released on bail vide order of this Court dated 25.07.2022 in B.A. No. 752/2022.

4. The case of the prosecution is based solely on 'last seen together' theory, which is based on statement of the father of the deceased. The father of deceased lodged the report on 05.09.2021 mentioning therein that he went to his old house at 2.00 pm. to bring the electricity bill. He saw his son and both the accused sitting together and consuming liquor and had an altercation between them as well. As such, he left the house without taking electricity

bill. At 4.30 p.m., the informant came to know that his son Ramesh Dangre was murdered and he suspected the crime at the hands of the present applicant and the co-accused.

5. The theory of last seen together has been in a way completely washed out by the statement of witness Ganesh Lambat. He has stated before the police that on 05.09.2021 the present applicant made a phone call to him at 1.00 p.m. and requested for his Activa scooter, by stating that he has to go to Hari Om Dhaba (roadside eatery) for taking lunch. The scooter was handed over to Piyush and the witness went back home. At 2.00 p.m. the witness called Piyush and said that he wants his scooter back to which the applicant stated that he is coming home. Ultimately the applicant came back at 3.00 pm, under the influence of alcohol. Thus, at 3.00 p.m. the applicant was with one of the witnesses of the prosecution and therefore the theory of last seen together at 2.00 p.m. loses its significance.

6. That apart, the witness Bhagwandas Relwani, the *Dhaba* owner states that on 05.09.2021, two persons came to Dhaba at 2.00 p.m. on Activa scooter. They consumed liquor in ten minutes. Thereafter, they ordered food for lunch. The Dhaba owner prepared the dish and served them. One of them was saying that the Kalya(deceased) has beaten him mercilessly. Thereafter they left the Dhaba by paying bills. The statement would indicate that the applicant and co-accused were at Dhaba at 2.00 pm. They consumed liquor and thereafter placed the order, which was then prepared and served on the table. The applicant and the co-accused consumed the same, paid the bill and left the Dhaba. This might take around 45 minutes to an hour and *prima facie* appears to be so because at 3.00 p.m. the applicant is said to have met the witness-Ganesh Lambat and returned back the scooter.

7. Thus, the last seen together theory appears to be highly doubtful.

In the circumstances, merely on the basis of discovery of weapons at the instance of the applicant may not be sufficient proof to, at least, continue his incarceration. As stated above, the co-accused with similar accusation has already been released on bail. There is no reason why the same benefit should not be granted to the present applicant.

8. On inquiry, the learned counsel for the applicant submits that there are no criminal antecedents against the applicant and he has permanent residence at Nagpur and, as such, roots in the society. Considering the nature of evidence, I am of the considered view that personal liberty of the applicant cannot be compromised. Hence the order.

ORDER:

- (i) The Criminal Bail Application is allowed.
- (ii) The applicant – Piyush Damodar Panchbuddhe, shall be released on bail, on executing a PR bond in the sum of Rs.25,000/- (Rupees twenty five thousand), in respect of Crime No. 476/2021 for the offences punishable under Sections 302, 323, 447, 120B read with Section 34 of the Indian Penal Code registered at Police Station, Pardi, Nagpur, with one solvent surety in the like amount.
- (iii) 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.
- (iv) The applicant shall not obstruct or tamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police.
- (v) The applicant shall not leave the territory of Pardi Police Station, Nagpur without prior permission of the Court, till the trial is over.

- (vi) The applicant shall maintain law and order.
- (vii) 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 residence till the final disposal of the case.
- (viii) The applicant shall regularly attend the court and cooperate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (ix) 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 sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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