

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

CRIMINAL APPLICATION (BA) NO. 1359 OF 2022

Vishal S/o Gunwant Narnaware

..VS..

State of Maharashtra through PSO, PS Mouda, Distt. Nagpur.

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

Court's or Judge's orders

Shri C.R. Thakur, Advocate for Applicant.
Shri S.M. Ghodeswar, A.P.P. for Non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 30, 2023.

1. Heard learned counsel for both the sides.
2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (in short "the Code"). The applicant have been arrested on 11.02.2022 in Crime No. 69/2022 registered with Police Station Mouda, Nagpur for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.
3. The accusation against the applicant is that he has committed murder of his friend namely Nitin Rajpande. According to the prosecution, on 07.02.2022 applicant and Nitin had proceeded to attend their duty as Guard in Haldiram Company situated at Umri Road. The applicant is said to have assaulted Nitin by means of metal rod on various parts of his body including head.

Further case of the prosecution is that the applicant after committing the crime has suo-motu appeared in the Police Station and showed the spot, from where the body was recovered. Spot is located at Bhugaon to Umari Road, Bhugaon Shivar, besides the agricultural field owned by one Suresh Ambilduke.

4. Learned A.P.P. submits that metal rod has been recovered at the instance of the applicant. Prosecution claims that it had blood like stains and the same has been sent to Forensic Laboratory for analysis. The postmortem report shows that cause of death is head injury.

5. Learned counsel for the applicant however has rightly argued that there is no direct evidence in this case. The motive behind the crime is absent. The spot from where the body has been recovered had number of persons gathered. It cannot be thus said that the body has been recovered at the instance of the applicant under Section 27 of the Evidence Act.

6. When inquired of antecedents, learned counsel for the applicant submits that a case for an offence punishable under Section 324 of the IPC is pending against the applicant. However, he submits that merely on the said ground the bail may not be rejected, particularly when there is no evidence against the applicant.

7. What transpires from the above is that the applicant and Nitin were together on 07.02.2022. The missing report was lodged by the brother of deceased. The applicant is said to have confessed the crime by approaching the Police Station. The admissibility of said confession will be tested in the light of Section 25 of the Evidence Act. There is no direct evidence against the applicant. The case having been based on circumstantial evidence, the motive behind crime has its own importance, which is absent in the present case.

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

9. In view of above and considering the peculiar facts of the case and the nature of evidence against the applicant so also the 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.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed :

ORDER

- (i) The Application is allowed.
- (ii) The applicant- Vishal S/o. Gunwant Narnaware, be released on bail in Crime No. 69/2022 registered with Police Station Mouda, Nagpur for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) 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 mobile number(s) and the residence till the final disposal of the case.
- (iv) 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.
- (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 from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any condition, 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.)

Kirtak.