

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

CRIMINAL APPLICATION (BA) NO.1378 OF 2022
Deepak s/o Pyarelal Bhute Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri R.M. Daga , Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant/State.
Shri R.M. Pande, Advocate for assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 05, 2023.

The present application is preferred by the applicant for grant of bail in connection with Crime No.607/2021 registered with Police Station, Gondia (City), Gondia for the offence punishable under Sections 302, 120B of the Indian Penal Code and under Sections 3, 25, 27 of the Arms Act. The applicant is arrested on 21.08.2021 and since then the applicant is in jail.

2. The crime is registered on the basis of report lodged by the wife of the deceased on an allegation that on 21.08.2021 at about 7.30 am, her husband left the house for proceeding the gym. At about 7.55 am, one Shyam Kundnani came to her house and disclosed her that he has seen her husband in injured condition lying behind the circus ground. He has also witnessed one person running from the spot. She informed the police that due to some unknown reason her husband was assaulted and killed by

somebody. Thus, FIR is lodged against the unknown persons. During investigation the investigating officer has arrested four accused. The present applicant is accused no.2. As per allegations in the FIR and on the basis of investigation that the present applicant is the person who carried the applicant no.1 on his motorcycle and thereafter the alleged incident has taken place. It is further alleged that the present applicant is one of the conspirators. On the basis of the investigation, the applicant is arrested and since 21.08.2021 he is in jail.

3. As contention of the applicant that merely he is working in the gym alongwith accused no.3 he is falsely implicated in the alleged offence. There is no direct or circumstantial evidence to connect the present applicant with the alleged offence. Since last two years he is in jail. The accused no.4-Subham has brought the cartridge and handed over to the accused no.1 is also released on bail and accused no.3 is also main conspirator, who is also released on bail. Thus, the case of the present applicant is on better footing. There is no direct or circumstantial evidence against the present applicant to connect him with alleged offence. Considering that the applicant is in jail for considerable period and there is no progress in the trial. The applicant be released on bail.

4. The said application is strongly opposed by the State on the ground that the present applicant is the main conspirator who has received the amount for killing the

deceased. There is *prima facie* material against the present applicant. The panchanama regarding CCTV footage shows that it is observed from the said CCTV footage that on the day of incident of present applicant and the accused no.1 left the place together and thereafter the deceased was found dead. Thus, the role of the present applicant in actual incident is also revealed. Considering the same, the application deserves to be rejected.

5. Heard learned counsel for the applicant Shri R.M. Daga. He submitted that admittedly the FIR is lodged against unknown persons. During investigation, the investigating officer has recorded the statement of one Krushna who is alleged eye witness of the said incident. From his statement he has pointed out that he has witnessed the accused no.1. As far as his disclosure regarding involvement of the present applicant is concerned, no investigation is carried out regarding the source of information. The learned counsel for the applicant further pointed out the statement of Prakash alias Rinku Dhannalal Bansod. From his statement also the involvement of the present applicant did not reveal. He further pointed out one more statement of Somesh Dilip Lonarkar and submitted that from his statement also the involvement of the accused Shubham is revealed. Thus, except the circumstance that is the CCTV footage, which is alleged by the prosecution and from the panchanama it reveals that present applicant left alongwith the co-accused. However, statement of the eye witness shows that he has

only seen one person running from the place of the incident, therefore, presence of the present applicant and the spot of the incident is not substantiated by any circumstance or the statement of any witness. He further submitted that the co-accused who is main conspirator is already released on bail. The accused no.4 who has assisted the accused no.1 by supplying cartridge is also released on bail. Considering the allegation against the accused persons who are released on bail and the allegations against the present applicant, the present applicant is on a better footing. Since last two years he is in jail, no purpose will be served by the keeping him behind bars and hence he be released on bail.

6. Shri A.M. Kadukar, learned APP strongly opposed the application on the ground that the panchanama regarding CCTV footage specifically shows that present applicant proceeded along with accused no.1 on the day of incident, which is sufficient to connect the applicant with the alleged offence. If applicant/accused is released on bail he will tamper with the prosecution evidence and hence bail application deserves to be rejected.

7. Shri R.M. Pande, learned counsel appearing for the informant also endorsed the same contentions and opposed the application for grant of bail.

8. Having heard both sides and on perusal of the investigation papers, except the CCTV footage panchanama

no material is on record to show that the present applicant is also involved in the said conspiracy. As far as statement of the eye witness is concerned, no investigation is carried out regarding his source of information in respect of involvement of the present applicant in the alleged offence. As far as other witnesses are concerned, no role is attributed to the present applicant regarding alleged incident. As far as the receipt of the money for killing the deceased is concerned, there is no material on record collected during the investigation to show that the present applicant has received said amount and he has accepted the said contract. Considering that co-accused nos.3 and 4 to whom more graver role is attributed are released on bail. There is direct material against them to show their involvement comparatively against the present applicant except circumstance that in CCTV footage the applicant was seen alongwith the co-accused no other material is on record to show his involvement. Considering the same, the applicant has made out a case to release on bail. Considering the applicant is behind bar for considerable period and no purpose will be served by keeping him behind bar, application deserves to be allowed. In view of that, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.

ii. The applicant – Deepak s/o Pyarelal Bhute be released on bail in connection with Crime No.607/2021 registered with Police Station, Gondia (City), Gondia for the offence punishable under Sections 302, 120B of the Indian Penal Code and under Sections 3, 25, 27 of the Arms Act, on he executing PR bond in the sum of ₹30,000/- with one solvent surety in the like amount.

iii. The applicant shall furnish the cellphone number and address with address proof. In addition, the applicant shall also furnish the names of his two relatives and their address with address proof.

iv. The applicant shall not leave the jurisdiction of District Court, Gondia without prior permission from the Court.

v. The applicant shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

With this, the application is disposed of.

JUDGE

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