

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

CRIMINAL APPLICATION (BA) NO.1417 OF 2022

Sangam Sambhaji Sangore

Vs.

State of Maharashtra, through PSO, PS, Ramnagar, Chandrapur.

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

Court's or Judge's orders.

Shri S.P. Bhandarkar, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 5, 2023.

This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant has been arrested on 11.09.2021 in Crime No.900/2021 registered with Police Station, Ram Nagar, Chandrapur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. Briefly stated the case of the prosecution is that three accused namely Shubham, Sangam (present applicant) and Anand have committed murder of Sanket on 09.09.2021. The spot of the crime is behind Ambedkar College, forest area, Chandrapur.

4. Learned counsel for the applicant submits that there is no direct evidence. The case of the prosecution is based on circumstantial evidence. The prosecution claims the case to be of last seen together theory.

5. Learned counsel for the applicant submits that applicant made an attempt to attend the police station 09.09.2021 but since the police officer Purushottam Chikate was not in the police station, he was required to approach the police station on 10.09.2021. According to Shri Bhandarkar, the applicant has informed the police, that some incident has occurred at the spot mentioned above. The police, however, did not register the FIR and have reported in the applicant.

6. Learned APP submits that the applicant had not only approached the police station but confessed the crime. He has invited my attention to the statement of Purushottam Chikate, police constable. He states that, on 09.09.2021, the applicant, called him and said that he (applicant) wish to meet him (witness). The witness was busy and therefore asked applicant to meet on next day i.e. on 10.09.2021. On the next day, when the witness was in the police station. The applicant met him and informed him that he and Shubham (co-accused) committed mistake and have murdered Sanket. The witness himself alongwith police staff rushed to the spot, where they found body of Sanket. There were injuries on his person. The body removed to the hospital.

7. Learned APP has then invited my attention to another witness namely Harshal Ekare, the Assistant Police Inspector. His statement is identical to the statement of

Purushottam Chikate. According to learned APP, the applicant has confessed the crime, not before the police officer but before his friend who happened to be the police official. This submission is made on the ground that the applicant was knowing Purushottam Chikate and had his phone number with him and therefore he called him and said that he wished to meet him by saying 'भाउ भेटायचे आहे'. Thus, an attempt is made to convey to the Court that though witness - Purushottam Chikate is a police constable and though the crime is confessed in the police station before the police officer, the confession could be said to be extrajudicial confession on the ground of confession is before the friend, who happened to be the police official.

8. I am not convinced with the aforesaid submission. Section 25 of the Indian Evidence Act provides that no confession made before police officer shall be proved against person accused of any offence. Thus, even if it is to be admitted that the witness Purushottam Chikate had friendly terms with the applicant, the fact remains that he is/was police official and that he was present in the police station when the applicant confessed the crime. The investigating agency, therefore, ought have collected additional evidence against the applicant to prove his complexity with the crime.

9. The additional evidence, according to learned APP, is the statement of witness Shrikant, who is friend of the accused persons. He states that in the night of 08.09.2021,

at the house of Rohankar, he along with Sharukh Sheikh, Rahul Giritkar, Vinod Gedam, Sangam Sagore (present applicant), Patrik and Anil Kamble were playing cards. At about 00.30 hours, Sangam received a phone call. He left the place. He came back at 02.30 hours with one unknown person. Both were heavily drunk. The applicant slept on the bed. The unknown person was playing cards. At 04.00 hour, witness went to his house and slept. At 10.00 hours he got up and at 11.30 hours he had been to Warora Naka. His friend Guddu came there. Both had been to Beer shoppe. Sangam with the unknown person and Shubham were present. They consumed 7 to 8 beers. Two beers were carried by them. They all; Sharukh Sheikh, Rahul Giritkar, Vinod Gedam, Sangam Sagore (present applicant), Patrik, Anil Kamble and the unknown person came down to a place behind Amedkar College and sat near bushy area. Sangam handed over ₹500/- to the witness to bring beer. The witness left the place for getting beers. Guddu, unknown person, the applicant and Shubham stayed get back. The witness consumed liquor and did not return. On 11.09.2021, he came to know that the unknown person, who accompanied Sangam has been killed by Sangam, Shubham and Guddu alias Anand.

10. The statement of the witness about involvement of the applicant and the co-accused on the point of committing murder of Sanket is hearsay.

11. Learned APP submits that the applicant is facing charge under Section 120B of the IPC as well and therefore they all will have to discharge burden under Section 106 of the Indian Evidence Act. This theory appears to me to be far fetched. Nonetheless, the prosecution will get opportunity to put forth its version before the trial Court, which will be tested by the defence in cross-examining,

12. As of now, there appears no direct evidence against the applicant, nothing has been recovered at the instance of the applicant. The weapon of crime is knife, which has been recovered at the instance of co-accused Shubham.

13. When enquired of antecedence, learned counsel for the applicant submits that there are 10 cases pending against the applicant but then offences alleged are of lessor gravity. As such, the antecedence could have been considered, however, having regard to the evidence against the applicant, which *prima facie*, appears to be weak evidence, the bail cannot be refused only on the basis of the criminal antecedence.

14. In view of above and considering nature of the evidence against the applicant coupled with the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be

protected by putting the applicant to appropriate terms.

15. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

16. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Sangam S/o Sambhaji Sangore, be released on bail, in Crime No.900/2021 registered with Police Station, Ram Nagar, Chandrapur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹50,000/- 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 same till the final disposal of the case.
- (iv) The applicant shall cooperate in the investigation and, if charge-sheet is filed, 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/her 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 conditions, 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.

JUDGE

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