

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

CRIMINAL APPLICATION (BA) NO.1421/2022

Nihal s/o Annaji Raut

..VS..

State of Mah., thr.PSO PS Warthi, Tahsil Mohadi, District Bhandara

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

Court's or Judge's Order

.....
Shri Akshay Naik with Shri R.A.Gupte, Advocates for the
Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 4/07/2023

PRONOUNCED ON : 11/07/2023

1. By this application, the applicant seeks bail in connection with Crime No.99/2022 registered with Warthi Police Station, tahsil Mohadi, district Bhandara for offences punishable under Sections 302, 143, 147, 148, 149, 120(B), 201, and 203 read with Section 34 of the Indian Penal Code and under Section 4/25 of the Indian Arms Act.

2. The applicant is arrested on 10.6.2022 and since then he is in jail.

3. The crime is registered against the applicant on the basis of First Information Report lodged by Rakesh Mukesh Tirpude. The accusation against the applicant is that the applicant and the deceased had purchased a tractor in

partnership and there was a dispute between them. Since there was failure on the part of the deceased to clear financial dispute, the applicant along with other co-accused hatched a conspiracy to eliminate the deceased and accordingly in order to eliminate the deceased the applicant and other co-accused committed murder of the deceased. On the basis of the report, initially the crime was registered against unknown persons. During investigation, on the basis of confessional statement of co-accused, the applicant is arrested.

4. As per contentions of the applicant, he is falsely implicated in the alleged crime. In fact, there is no direct or circumstantial evidence against him to connect him with the present crime. He is arrested merely on the basis of confessional statement of co-accused which is inadmissible in evidence. Now, investigation is completed and chargesheet is filed. From investigation, it reveals that there is absolutely no material to connect him with the alleged offence. He is arrested merely on suspicion. There is no statement of witness showing that the applicant is involved in the present crime. The involvement of the applicant is shown on the basis of statement of one Dinesh Meshram which was recorded on 12.6.2022. However, the

applicant is arrested on 10.6.2022. It creates doubts about the investigation carried out by the investigating officer. Material collected, during the investigation, shows there is absolutely no evidence against him. Now, chargesheet is filed. Further custody of the applicant is not required. Hence, he be released on bail.

5. The said application is strongly opposed by the State on the ground that there was a previous enmity between the deceased and the applicant. As there was the previous enmity and as the deceased could not clear the financial dispute between them, the applicant hatched conspiracy with other co-accused to eliminate the deceased. With an intention to eliminate the deceased, the applicant and the other co-accused, when the deceased was returning from his agricultural field, restrained and assaulted him by giving blows of weapons. Due to the severe blows to the deceased, the deceased had sustained 37 injuries and succumbed to the injuries. It is further contention of the State there is *prima facie* evidence against the applicant and as such the bail application deserves to be rejected.

6. Heard learned counsel Shri Akshay Naik for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

7. Learned counsel Shri Akshay Naik for the applicant submitted that the applicant is arrested on the basis of statement of Dinesh Meshram, who is alleged to be an eyewitness of the incident. The said statement of Dinesh Meshram was recorded on 12.6.2022. However, the applicant is arrested on 10.6.2022, prior to recording of the statement of said Dinesh. There is no other material to connect the applicant with the alleged offence. The arrest of the applicant prior to recording of statement of said Dinesh itself is sufficient to show that without any *prima facie* material the applicant was arrested. The prosecution has not explained on what basis the applicant was initially arrested. Now, the investigation is completed. The applicant is behind bars since 10.6.2022. His further custody is not required and, therefore, he be released on bail.

8. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that initially co-accused Kachra Chopkar and Bagga Gate were interrogated.

On the basis of the interrogation, the name of the applicant was revealed and, therefore, the applicant along with said Kachra and Bagga were arrested. During the investigation, it revealed that there was a previous dispute between the deceased and the applicant. The financial dispute was not settled and, therefore, the applicant hatched conspiracy and eliminated the deceased. The CCTV footage, statements of witnesses, memorandum statements of the applicant and co-accused, and CDRs disclose involvement of the applicant in the alleged offence. He further submitted that the location of the applicant and the co-accused persons shows that they were together at the spot of incident at the time of the occurrence. It further discloses frequent communications amongst them. Thus, there is a *prima facie* material against the applicant to connect him with the alleged offence. For all the above reasons, the bail application deserves to be rejected.

9. Having heard both the sides and perused the record of the case, it reveals that the crime is registered against the applicant on the basis of report lodged by Rakesh Mukesh Tirpude. The First Information Report was lodged against unknown persons. After registration of the crime, co-accused namely Kachra and Bagga were taken

into custody by the police for interrogation. During interrogation with them, the name of the applicant was revealed and, therefore, the applicant was arrested along with these above accused. During interrogation, the investigating officer has recorded statement of eyewitness Dinesh Meshram. From the statement of said Dinesh, involvement of the applicant was revealed. After the arrest, the applicant gave memorandum statement and shown the place whereat incriminating articles were concealed. It further reveals from his statement under section 27 of the Indian Evidence Act that to mislead the police, they sprinkled blood of chicken on their clothes. In fact, they have burnt their clothes, which were on their persons, on the day of the incident itself. It further reveals from the CCTV footage that four persons proceeded on motorcycle by covering their faces from Bhandara to Warthi. The description of the persons witnessed in the CCTV footage is further narrated by eyewitness Dinesh. The statement of Dinesh also shows that two persons out of them were covering their faces. As per the investigation, there was constant communication between the applicant and the other co-accused. The location of the applicant and other co-accused shows that they were together at the spot of the

incident. Their location also shows that they were together at Tumsar. The postmortem report shows that the deceased sustained 37 injuries out of which 20 are incised wounds and on the vital part of the body. After the incident, the applicant, in order to screen himself from punishment, destroyed the material evidence and also tried to create false evidence to mislead the investigating agency. From the statement of the applicant under section 27 of the Indian Evidence Act, he along with other co-accused burnt clothes which were on their person. Admittedly, from the investigation papers it nowhere reveals that what was the material available with the investigating agency to arrest the applicant on 10.6.2022. However, statements recorded during the investigation, recovery of the articles at the instance of the applicant, and statement of the applicant under section 27 of the Evidence Act showing the place where clothes are burnt which were on his person, are sufficient material to connect the applicant with the alleged offence. The incriminating articles are forwarded to the Chemical Analyzer. The forensic report is yet to be received.

10. It is well settled that while considering bail applications, considerations to be seen are; gravity of offence, punishment provided for offence, whether there is a

possibility of fleeing away of accused if he is released on bail, and apprehension of tampering of evidences.

11. Considering the nature of the crime and the circumstances, the applicant has hatched the conspiracy to eliminate the deceased.

12. Thus, there is a *prima facie* material against the applicant to connect him with the alleged offence.

13. In view of the above reasons, the bail application deserves to be rejected and is **rejected**.

The criminal application stands dispose of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!