

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

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CRIMINAL APPLICATION (BA) NO. 1424/2022

Nilkantha @ Kanthya Devrao Thakre

..Applicant

versus

The State of Maharashtra

Th: Its PSO Pulgaon, Dist. Wardha.

..Respondent

.....
Mr.M.V.Rai, Advocate for the applicant

Mr.M.J. Khan, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 11th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 10.01.2022 in Crime No.39/2022 registered with Police Station, Pulgaon District Wardha, for the offence punishable under Section 302 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that the informant, who is wife of the deceased, has lodged the report stating therein that on 09.01.2022 at about 8.00pm, her husband came to the house in an injured condition. When she enquired as to what had happened, he responded that the applicant has assaulted him by means of wooden stick on the count that he (deceased) had extra marital affair with the daughter of the applicant. The informant then states that scene of crime is near the water tank of the village. She further states that one witness namely Jay Talan, had seen the applicant running away from the water tank, holding wooden stick in his hand. The deceased was

removed to the hospital where he was declared brought dead. The deceased had multiple injuries on his head, cheeks and chest.

3. The learned counsel for the applicant contends that there is no direct evidence in the matter. He further submits that the *Marg* report that was registered in the hospital on 09.01.2022 indicates that the brother of the deceased has stated that the deceased was found injured and in an unconscious condition by his relatives near his house at 7.30 pm. Thus, it is argued that if the deceased was found unconscious at about 7.30pm, how the applicant could have assaulted him at 8.00 pm, as stated by the informant in the FIR.

4. The learned APP has invited my attention to the statement of a witness, namely, Jay Talan. He has stated that the deceased is his cousin uncle. The witness was with the informant at her house. The deceased came there at about 8.00 pm in injured condition and narrated the story as has been stated by the informant. The informant asked the witness to go to the spot of the crime and bring back the chappals of her husband. The witness rushed to the spot i.e. Water tank by motorcycle. He noticed that the chappals of his uncle were lying at the spot and when he was about to return, he saw the applicant running away, by holding a wooden stick in his hand. Accordingly, it is argued that there is every reason to believe that the applicant is the one who is responsible for the offence.

5. The recovery *panchnama* indicates that the wooden stick was having blood stains. However, the FSL report indicates that no blood was detected on the wooden stick. Thus, it will be a challenge to

the prosecution to connect the applicant with the crime on the basis of the wooden stick. There is no direct evidence against the applicant of his involvement in the crime. The prosecution will get the opportunity to put forth its version of circumstantial evidence which will be tested by the defence in the cross-examination. However, at this stage, considering the nature of evidence, it will not be proper to continue incarceration of the applicant.

6. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

7. 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.

8. 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.

9. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Nilkantha @ Kanthya Devrao Thakre be released on bail in Crime No.39/2022, registered with Police Station, Pulgaon, District : Wardha for the offence punishable under Section 302 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.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 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.
- (v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournment, except under extreme circumstances to the satisfaction of the trial Court.
- (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.

[ANIL L. PANSARE, J.]

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