

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

CRIMINAL APPLICATION (BA) NO. 1447 OF 2022

Suman wd/o Rameshwar Nishad

vs.

The State of Maharashtra

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

Court's or Judge's Orders.

Mr. A. D. Hazare, Advocate for applicant.
Mr. N. R. Rode, APP for respondent State.

CORAM : ANIL L. PANSARE J.

DATE : 07/01/2023

The applicant has filed application under Section 439 of the Criminal Procedure Code, 1973. The applicant has been arrested in Crime No. 283 of 2022, registered with Police Station, Ballarsha, District Chandrapur for the offence punishable under Sections 302, 201 r/w 120-B of the Indian Penal Code (IPC). The applicant has been arrested on 12/03/2022, since then she is in jail. The charge-sheet has been filed.

2. The accusation against the applicant is that she has conspired with co-accused to eliminate her husband Rameshwar. The applicant and accused

No.1 were to be in illicit relationship. The accused No.1 and applicant's husband were friends. The husband came to know of the illicit relationship. The relations thereafter, strained between the husband and wife, so also with the friend.

3. The learned Sessions Court has rejected the bail application on the ground that the offence is serious and that there are direct allegations of illicit relationship between the accused No.1 and the applicant. The learned Sessions Court has further recorded finding that the applicant had the knowledge that the accused No.1 was going to commit the murder of her husband and that she could have informed the police and save the life of her husband. It is further mentioned that applicant has herself stated that she had asked the accused No.1 not to kill her husband.

4. I have gone through the record placed before me with the assistance of the learned counsel for the parties. However, I am unable to find from the record the basis on which the aforesaid findings have been recorded by the Sessions Court.

5. This is a typical case where investigating agency has detected the crime by applying shortcut

method, which ultimately may prove fatal to the prosecution. The police has come in motion on the basis of statement dated 11/03/2022 made by accused No.1. The accused No.1 has informed the police that on 10/03/2022 at around 7.00p.m. he and Rameshwar went out on Rameshwar's motorcycle. They consumed liquor at one place and proceeded further for dinner at Dhaba near Rajura. After finishing dinner at about 9.00 p.m. they were returning back on motorcycle. Rameshwar was riding the motorcycle. When the motorcycle approached the bridge of Wardha river, one motorcycle came from opposite side and because of it's light Rameshwar lost control and both fell down. Accused No.1 fell on the road, however, Rameshwar along with motorcycle fell in the river. Accused No.1 made an attempt to search Rameshwar through mobile torch, but could not find him. Thereafter, he sought help of two fruit stall vendors who were sitting nearby, to trace Rameshwar but could not. Thereafter, he called Police who came at the spot in some time. The police, accused No.1 and the fruit stall vendors made one more attempt to trace Rameshwar. They went in the river and under the light of the torch searched Rameshwar, but in vain.

6. For the reasons best known to the police they have not acted on this statement. The police ought to have registered First Information Report(FIR), but did not. It appears that statement of fruit stall vendors have also been not recorded. It would be important to note here that the information given by accused No.1 indicates that the two fruit stall vendors were present near the bridge, selling fruits. Their statements were necessary in view of the subsequent twist to the story.

7. Immediately on the next date i.e. 12/03/2022 another statement of accused No.1 came to be recorded though at the top of the statement date 11/03/2022 has been mentioned. The accused No.1 has within 24 hours of first statement, drastically changed his version and stated before the police that he was in illicit relationship with the applicant. Rameshwar suspected the relationship and therefore, restrained accused No.1 from coming home. Rameshwar thereafter started harrassing applicant as well. He further states that in January, 2022 the applicant left the house and went to her home town Banda, Uttar Pradesh. The accused No.1 went there and resided with her for 4 to 5 days. Both had decided to get married, but felt that in the life

time of Rameshwar they can't do so, therefore, it was decided to eliminate Rameshwar.

8. It is also stated in the statement that on 26/02/2022 in the meeting between Rameshwar, applicant, her mother and accused No.1 an attempt was made to convince Rameshwar that there was no illicit relationship between applicant and accused No.1. However, Rameshwar did not listen and abused accused No.1. Thereafter in continuation to the conspiracy to eliminate Rameshwar on 10/03/2022, accused No.1 took Rameshwar to Dhaba. He along with the assistance of his friend Abhijit Pande (another co-accused) have drown Rameshwar in the Wardha river. The accused No.1 then called the police and narrated the earlier story. The FIR came to be recorded after finding the body on 12/03/2022 and in view of subsequent statement made by accused No.1. This is how the police thought it proper to detect the crime.

9. Section 25 of the Indian Evidence Act provides that no confession made to a police officer, shall be proved as against a person accused of any offence. The subsequent statement of accused No.1, being confessional statement, thus cannot be proved against him. If the said statement is said to be

inadmissible, no reliance could be placed on such statement. What remains then is the earlier statement of the accused No.1 which narrates story of accidental death. The police, however, has blamed applicant and accused No.1 of eliminating Rameshwar with the help of another co-accused.

10. Though the subsequent statement of accused No.1 is not admissible, but if what has been recorded in his statement is something that has been disclosed to police during interrogation, it was the duty of police to collect evidence in support of such information. The accused No.1 in his statement has mentioned about the meeting dated 26/02/2022, where, along with accused No.1, applicant, her mother and Rameshwar were present. They discussed about the illicit relationship of applicant and accused No.1. The police could have recorded statement of mother of the applicant on the point that this meeting was held and that there was such discussion on illicit relationship between the two. That could have been on admissible evidence. However, the investigating agency has not recorded her statement. Resultantly, there is hardly any evidence on this point. Even if it is to be presumed that there happened to be illicit relationship between the applicant and accused No.1, there is absolutely

nothing to support theory of prosecution that the applicant was party to the criminal conspiracy to eliminate Rameshwar. In fact there is absolutely nothing against the applicant to show her complexity with the crime.

11. Learned APP argued that the motive behind this crime was illicit relationship. The question is on what basis, the prosecution could accuse the applicant and accused No.1 of having illicit relationship. A statement of witness recorded on 16/04/2022 states that accused No.1 used to come to the house of Rameshwar, he used to get close to the applicant while talking. He suspected that there is something between the two, however, he did not bother to those acquaintance. This statement indicates that the neighbour had suspicious of having illicit relationship between the two. That by itself will neither prove illicit relationship between the applicant and accused No.1, nor will it prove that their had been a conspiracy to eliminate Rameshwar.

12. Learned App would submit that call data record shows that the applicant and accused No.1 were in contact prior to and subsequent to the incident. That cannot be said to be the evidence to prove guilt. It will be far fetched to implicate

applicant on the basis of call data report which only indicates that there was conversation between two mobile numbers.

13. Considering the evidence collected by the investigating agency, the liberty of the applicant cannot be compromised. Learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The applicant has deep roots in the locality. However, learned APP submits that she may abscond or go to Uttar Pradesh, if released on bail. The said apprehension can be dealt with by putting applicant to certain conditions.

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

15. The applicant has made out a case in her favour, hence, the following order :-

ORDER

A) Criminal Application is allowed.

B) The applicant be released on bail, in Crime No.0283 of 2022, registered with Police Station, Ballarsha, District Chandrapur for the offence punishable under Sections 302, 201 r/w 120-B of the Indian Penal Code, on her executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

C) The applicant shall remain present before the Police Station Ballarsha, District Chandrapur on every Monday between 3.00 to 5.00 p.m.

D) The applicant shall not leave the territorial jurisdiction of the Police Station Ballarsha, District Chandrapur without prior permission of the Court, till the trial is over.

E) 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 her from disclosing such facts to the Court or any Police Officer.

F) The applicant shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the police.

G) The applicant shall co-operate with the investigation and make himself available for interrogation, whenever required.

H) The applicant shall maintain law and order.

I) The applicant shall, at the time of execution of bond, furnish her address and telephone/mobile number(s) to the Investigating Officer and the Court concerned, and shall not change the residence till the final disposal of the case.

J) The Applicant shall regularly attend the Court and co-operate the learned trial Court to complete the trial for the above offences.

K) 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.

JUDGE