



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

CRIMINAL APPLICATION (BA) NO.73 OF 2024

(Prashant @ Ramesh s/o Anandrao Naktode Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.M. Daga, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 5, 2024.

By this application, the applicant is seeking bail as he was arrested on 24/08/2023 in connection with Crime No.763/2023 registered with Police Station Mouda, District Nagpur for the offence punishable under Sections 302, 376(2)(I) read with Section 34 of the Indian Penal Code.

2. Learned Counsel for the applicant submitted that the present applicant is arrested merely on suspicion as his truck was found in the vicinity where the alleged incident taken place. He pointed out that the FIR is lodged by Santosh Dinanath Nimje who is the father of the deceased who alleged that on 22/08/2023 he approached to the police station as he was informed by the police that his daughter is admitted in the Mayo Hospital and taking treatment. Therefore, he immediately rushed to the Mayo hospital and seen his daughter who was not in a good condition and unable to communicate. His daughter left the house on 19/08/2023 and not returned back. She was

suffering from the mental illness as she is a mentally retarded girl. She was found in Mahalgaon shiwar on Nagpur to Bhandara road in an unconscious condition and police brought her in the hospital and during treatment she succumbed to the death. After postmortem report, it reveals that cause of death of the deceased is due to the internal injuries sustained by her on the head. He lodged the report against the unknown person. During investigation, it revealed that as the victim was mentally retarded girl, she left the house and thereafter she was seen in the vicinity of Navkar Industrial and Logistics Park, Mahalgaon. The CCTV footage shows that she was seen entering into the truck bearing No.MH-20-CT-4041.

3. He submitted that merely because the applicant's truck bearing No.MH-31-CQ-9104 was also parked in the said premises at the time of incident, he is implicated in the present crime and to show his involvement in the said crime, the prosecution placed reliance on the CCTV footage. The said CCTV footage nowhere shows that present applicant was seen along with the deceased at any point of time. Besides the CCTV footage the prosecution relied upon the memorandum statement of the present applicant at whose instance allegedly the Tommy which was lying in the truck bearing No.MH-20-CT-4041 was discovered. He pointed out that one truck was seized by the police on 24/08/2023 at about 9:15 p.m. Said truck was in the possession of co-accused Mahendra Misal and since 24/08/2023, the truck

was in possession of the Investigating Officer. On 28/08/2023 prior to the memorandum statement of the present applicant i.e. at about 1.30 to 1.55 p.m. the investigating agency have searched the said truck bearing No.MH-20-CT-4041 and from the said truck one red and black colour seat cover piece which was lying near the gearbox and blue colour bangle pieces which were lying in the driver seat are seized by the investigating agency. The memorandum statement of the present applicant was recorded on 28/08/2023 at about 2.45 to 15.25 and discovery was from the 15.26 to 17.41. Thus, he submitted that though the custody of the truck was with the investigating agency from 24/08/2023 thereafter on 28/08/2023 prior to the memorandum statement of the present applicant, the search of the cabin of the truck was carried out by the investigating agency and thereafter the memorandum statement of the present applicant was recorded and it was shown that at the instance of the present applicant, one Tommy was recovered from the cabin of the truck which appears to be improbable and unacceptable. He submitted that it is pertinent to note that prior to the memorandum statement, the cabin of the truck bearing No.MH-20-CT-4041 was searched by the investigating agency but they have not seized the Tommy which was lying in the cabin of the truck appears to be improbable and unacceptable. He submitted that except that memorandum statement there is no other material to connect the present applicant with the alleged offence.

Now, the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, the application deserves to be allowed.

4. Learned APP strongly opposed the application and submitted that at the time of incident both trucks were parked near to each other in the vicinity of Navkar Industrial and Logistics Park. The CCTV footage shows that victim was near both the truck and thereafter the victim was found in an injured condition. She also pointed out that there was an association of both the accused. They had a dinner together at the said Logistics Park and thereafter the deceased was found in an injured condition. Thus, she submitted that the entire case is based on the circumstantial evidence. *Prima facie* material shows the involvement of the present applicant in the alleged offence. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the incriminating truck bearing No.MH-20-CT-4041 was in the possession of the investigating agency from 24/08/2023. On 28/08/2023 the truck was searched by the investigating agency and from the said truck i.e. from the cabin of the truck one black red colour seat cover piece which was lying near the gearbox and some blue bangles broken pieces are seized by the police. As per the investigating agency on 28/08/2023, the present

applicant has given a memorandum statement in presence of two panchas at about 14.45 hours and same was recorded till 15.25 hours, thereafter at about 15.26 hours to 17.41 hours one Tommy was recovered and discovered which was lying in the truck cabin of truck bearing No.MH-20-CT-4041. Thus, it is apparent that though the investigating agency was in possession of the said truck prior to the memorandum statement of the present applicant, they have searched the vehicle and only bangle pieces and one seat cover piece was seized and they have not seen the Tommy lying there appears to be improbable. One statement was also recorded by the investigating agency during the investigation of one Sunil Kanoji Aswale who has obtained the photographs of the spot of incident. The statement of the witness also shows that he has seen the victim i.e. deceased in the cabin of truck bearing No.MH-20-CT-4041 i.e. also near the steering and at that time co-accused Mahendra was also seen in the said truck. Thus, as far as the co-accused is concerned there is evidence to the extent that he was seen along with the deceased in the said truck but as far as present applicant is concerned his presence neither seen along with the deceased at any point of time nor he was seen at the time of incident along with the deceased and the co-accused. The recovery which is shown at the instance of the present applicant is also appears to be doubtful. Thus, considering that the entire case is based on the circumstantial evidence and it is well settled that when

case is based on circumstantial evidence, the circumstances which are pointing out towards the guilt of the accused are to be *prima facie* established. From the investigation papers except the presence of the present applicant along with his truck in the said premises, there is no other material to connect him with the alleged offence. Now, the investigation is completed and charge-sheet is filed. Considering the nature of the evidence collected by the investigating agency, the applicant has made out a case for grant of bail. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicant – Prashant @ Ramesh s/o Anandrao Naktode in connection with Crime No.763/2023 registered with Police Station Mouda, District Nagpur for the offence punishable under Sections 302, 376(2)(I) read with Section 34 of the Indian Penal Code, be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned police station twice in a month i.e. 1st and 15th day of every month and the

Investigating Officer shall record his presence.

(iv) The applicant shall not enter into the vicinity of Dhammadeep Nagar, police station Yashodhara Nagar, Nagpur till culmination of the trial.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vi) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*