



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

CRIMINAL APPLICATION (BA) NO. 116 OF 2024

Vinod @ Motu Netlal Thakre V/s 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. N.R.Tekade, counsel for the applicant.

Mrs. Swati Kolhe, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/04/2024.

1. The applicant came to be arrested on 21/03/2023, in connection with Crime No. 67/2023, registered with Police Station Ram Nagar, Gondia Tq. and District Gondia for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of report lodged by Satyashila Mahendra Sihore who is the sister of the deceased. As per the allegation, deceased who is the brother of the informant was having family dispute with his wife namely Bhumeshwari. It is alleged that there used to be quarrel between them, on account of the wife of the deceased was visiting the house of one Kamal Thakrele who is the co-accused, which was disliked by the deceased. On 18/03/2023, one marriage ceremony was scheduled of cousin sister of Bhumeshwari and therefore, deceased alongwith his father-in-law had been to attend the said marriage ceremony. On 20/03/2023, the informant has

received information that the dead body of her brother Sandeep was found near the agricultural college, during the vicinity of forest. She immediately along with husband visited the said place, and saw that there was injury on the neck of the deceased and the dead body of the deceased was hanged on one tree. She suspected that the death of the deceased is caused by the relatives of the wife of the deceased. Therefore, she lodged the report against the present applicant and the other co-accused. On the basis of said report, the police have registered the crime.

3. Learned counsel for the applicant submitted that as far as the present applicant is concerned, the entire case is based on circumstantial evidence and the only circumstance on which, the prosecution relied upon is the seizure of the mobile phone of the deceased at the instance of the present applicant on the basis of memorandum statement. Beside this material, there is no other circumstances to connect the present applicant with the alleged offence. He further submitted that during the investigation, the statement of one Nilesh Dhanlal Maskare was recorded who has stated that on earlier night i.e. 19/03/2023, the deceased has obtained the mobile phone from him at about 8.30 and went outside and not returned back. As per his statement, the present applicant and other co-accused were also present in the reception party, but he nowhere stated that alongwith the deceased the present applicant have also left, where the place of reception. He submitted that considering the nature of the circumstances that the mobile phone was seized at the instance of the

present applicant, no other circumstances are against the present applicant to connect him with the alleged offence. The entire case is based on the circumstantial evidence and it is well settled that when case is based on circumstantial evidence, prosecution has to establish the chain of circumstances. Now, the investigation is already completed and the charge-sheet is already filed, further incarceration of the present applicant is not required. In view of that, he be released on bail. He further submitted that another co-accused Nos. 3 and 4 are already released on bail. The role of the present applicant is similar to the role of the co-accused. In view of that, the ground of parity is also available to the present applicant and prays for releasing him on bail.

4. Learned APP strongly opposed the said application on the ground that present applicant is relative of the wife of the deceased. The statement of the witnesses shows that there was no cordial relation between the deceased and his wife, there used to be quarrel between the deceased and his wife. At the time of incident, deceased along with wife had been to village Panjara Tq. and District Gondia to attend the marriage and reception of her cousin sister and the said incident is taken place when he was in the company of his wife as well as other relatives. The mobile phone of the deceased is seized at the instance of the present applicant. The statement of the witnesses shows the presence of the present applicant in the reception. As well as one seizure was also seized from the spot of incident which was stolen by the present applicant from the house of Suresh Rajaram Bangre. Thus, the

circumstantial evidence which is collected during the investigation sufficiently shows the involvement of the present applicant. In view of that, prays for rejection of the application.

5. Having heard learned counsel for the applicant and learned APP for the State. There is no dispute, as to the fact that the present applicant and the other co-accused are the relatives of the wife of the deceased. There is no dispute as to the fact that marriage ceremony of the cousin sisters of the wife of the deceased was scheduled on 19/03/2023. The present applicant as well as the other co-accused have attended the marriage as well as reception alongwith the deceased. As per the prosecution case, the deceased was eliminated due to the dispute between husband and the wife by the present applicant, present applicant and the co-accused, who are relatives of the wife of the deceased. To establish the connection of the present applicant with the alleged incident, the prosecution mainly placed reliance on the memorandum statement of the present applicant on the basis of which the place from which the mobile phone of the deceased was recovered. The statement of one Nilesh was recorded. From his statement, it reveals that on the earlier night on 19/03/2023, the deceased has obtained the mobile phone from the said Nilesh at about 8.30 p.m. and left the place of reception and thereafter not returned back. Admittedly, there is no material to show that the present applicant and the deceased were seen together, after deceased has left the place of the reception. The prosecution also

placed reliance on the statement of one Suresh Rajaram Bangre, who stated that three persons have stolen the seizure from his house. The statement further shows that these three persons were unknown to the said Suresh Rajaram Bangre, though the investigation is completed and charge-sheet is filed, no identification parade is held to identify the present applicant and other co-accused to ascertain that these were the persons, who visited the house of Suresh Rajaram Bangre and stolen the said seizure.

6. Thus, except the circumstances that mobile phone was seized at the instance of the present applicant, no other circumstances are on record to connect the present applicant. At this stage, investigation is already completed and charge-sheet is already filed, and it is well settled that when the prosecution is relied upon the circumstantial evidence, prosecution has to establish the circumstances which unerringly points out to the guilt of the accused. At this stage, I am restraining myself to comment regarding the nature of the evidence but considering the entire material on record against which insufficient to connect the present applicant with the alleged offence and now investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant is not required. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

(a) The criminal application is **allowed**.

- (b) The applicant – **Vinod @ Motu Netlal Thakre**, shall be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount, in connection with Crime No. 67/2023, registered with Police Station Ram Nagar, Gondia Tq. and District Gondia for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code, 1860.
- (c) The applicant shall not enter into the vicinity of village Sawari, Tah. and District Gondia till culmination of the trial.
- (d) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (e) The applicant shall attend the concerned Police Station on 1st of every month and shall not leave the jurisdiction of the Gondia without prior permission of the District Court.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]