



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

CRIMINAL APPLICATION (BA) NO. 157 OF 2024

Rakesh Rajendra Mahato 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. A.C.Jaltare, counsel for the applicant.

Mr. A.B. Badar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/04/2024.

1. The applicant came to be arrested on 17/07/2023, in connection with Crime No. 140/2023 registered with Police Station Bhadrawati, Tq. Bhadrawati, District Chandrapur for the offence punishable under Sections 302, 458, 460, 380, 201 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 Mangesh Bapurao Kharkar alleging that on 23.03.2023 at about 6.00 a.m. when he was at his house, he received a phone call of Avinash Pundlik Satpute from his village, who informed him that his father and one Madhukar Khuje were found dead in the temple and the door of the temple was opened. He immediately rushed to the spot and saw that his father was lying in the pool of blood, whereas the other deceased Madhukar Khuje was also lying in the pool of blood. The donation box in the temple was missing and the amount of the donation box was also stolen. It is alleged that while committing the dacoity of stealing the

amount from the donation box and the golden ornaments of the idol, the two persons were murdered. The FIR was lodged against the unknown persons. During the investigation, the involvement of the present applicant was revealed and, therefore, he was arrested.

3. Learned Counsel Mr. Jaltare for the applicant submitted that the entire case rested on the circumstantial evidence, and only circumstance which appearing against the applicant, is recovery of the *Sabhal* at the instance of the present applicant, on the basis of his memorandum statement. Besides the said recovery, there is no CDR report only CCTV footage connecting the present applicant with the alleged offence. He further submitted that, the co-accused against whom the evidence as to the CDR report was available, he is already released on bail by this Court. In the said CDR Report, the location of the co-accused was shown on the intervening night but this Court has considered the entire aspect and released him on bail. The case of the present applicant is on better footing.

4. He further submitted that though the incriminating weapon is seized at the instance of the present applicant, the query report of the medical officer shows that no blood stains or any foreign body was found on the said weapon. Thus, except the opinion that said injuries of the person of the deceased are possible by such type of weapons. There is no other material to connect the present applicant with the alleged offence. There are criminal antecedents against the

present applicant, however, mere criminal cases are pending against the present applicant is not sufficient to incarcerate him in the alleged crime.

5. Learned APP strongly opposed the said application on the ground that there are criminal antecedents against the present applicant. During the investigation, the involvement is revealed, on the basis of recovery of incriminating articles at the instance of the present applicant. The investigating officer has also recorded the relevant statement of the witnesses. The entire case is rested on the circumstantial evidence and one of the circumstance is one of the recovery of the weapon, at the instance of the present applicant and the opinion of the expert, shows that the injuries on the person of the deceased are possible by such type of weapons. He submitted that considering the offence committed is of a serious one, the applicant's involvement is revealed and if he is released on bail, he would tamper the prosecution witnesses and prays for rejection of the application.

6. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. The *Sabhal* is recovered at the instance of the present applicant. As per the expert opinion, the injury sustained by one of the deceased is possible by the said weapon. However, it is specifically mentioned that no blood stains or visible foreign body was found when the weapon was examined by the Medical Officer. Except the recovery of the incriminating article, there is no other material to connect the present

applicant with the alleged offence. As per the prosecution, the alleged incident has taken place in the intervening night of 22/03/2023 and 23/03/2023. There is no direct evidence or any CDR report showing that there was any communication between the present applicant and other co-accused. The tower location of the present applicant is also not collected during the investigation. It is well settled that when prosecution placed reliance on the circumstantial evidence, the circumstances should be of such a nature which shows the complete chain, any missing chain will benefit the accused. As far as the criminal antecedents are concerned, the learned counsel for the applicant submitted that mere criminal antecedents is not sufficient to connect the present applicant with the alleged offence when there is no material to show his involvement in the alleged offence.

7. It is well settled that mere criminal antecedents would not be an impediment to consider the bail application of the applicant. Considering the nature of the evidence which is collected during the investigation that only one circumstances on which the prosecution relied upon and now, the investigation is completed and charge-sheet is filed further, incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(a) The application is allowed.

- (b) The applicant – Rakesh Rajendra Mahato shall be released on bail in connection with Crime No. 140/2023 registered with Police Station Bhadrawati, Tq. Bhadrawati, District Chandrapur for the offence punishable under Sections 302, 458, 460, 380, 201 read with Section 34 of the Indian Penal Code, 1860, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (c) The applicant shall attend the Bhadrawati Police Station twice in a month on 1st and 15th of every month and the Investigating Officer shall record his presence.
- (d) The applicant shall not leave the jurisdiction of the Chandrapur District without prior permission of the Court.
- (e) The applicant shall not involve himself in such type of criminal activities.
- (f) The breach of any of the conditions would lead towards the cancellation of the bail.
- (g) The applicant shall furnish his cell phone number and address with the address proof along with the name of his two relatives along with their cell phone numbers and their address proof.

The application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]