



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

Criminal Application (BA) No. 173 of 2024

Anil s/o Gama Bhardwaj ..vs.. The State of Maharashtra through P.S.O., P.S. Talegaon (S.P),
Dist. Wardha]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. D. Dawda, Advocate for the applicant
Ms. D. V. Sapkal, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 17-04-2024

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'Code'). The applicant has been arrested on 9-10-2022 in Crime No. 493/2022 registered with Police Station, Talegaon, District Wardha for the offences punishable under Sections 302, 392 and 201 read with Section 34 of the Indian Penal Code (for short, 'IPC').

2. The FIR has been lodged by one Jasvirsingh Varisingh Saini, owner of the truck bearing registration no. MH-40-N-3210. The informant is involved in the transport business. He states that on 7-10-2022, he got an order of transportation of iron rods from Nagpur to Akola. The driver of the truck was Chakradharsingh Ramsingh (deceased), who was working with the informant for last 25 years. The driver proceeded with the truck containing iron rods from Nagpur to Akola. On 8-10-2022, at about 5.00 pm, the informant received a phone call from Parshioni Police Station stating that his truck bearing no. MH-40-N-3210 is stationed at Parshioni. The informant attempted to contact his driver

on phone but could not. The informant reached the spot and came to know that the applicant and co-accused have killed his driver in attempt to stole the iron rods and the truck.

3. My attention has been invited by the learned APP to the statement dated 19-10-2022 made by the Police Sub Inspector Dnyanoba Palnate. He was on patrolling duty. In the intervening night of 7-10-2022 and 8-10-2022, he received a message that one truck is stationed on Karanbhad – Itgaon road and that two persons were standing near the truck and their activities are suspicious and that they are all set to sell the articles lying in the truck. The witness along with panchas rushed to the spot. They found that the applicant was sitting in the truck. He was taken into custody and upon enquiry, he informed that he along with co-accused have killed Chakradharsingh and have stolen truck along with iron rods.

4. Learned Additional Public Prosecutor (APP) has invited my attention to the post mortem report which indicates that the deceased sustained multiple injuries, some of which were under scalp. There was a fracture extending from right parietal to frontal area. Base of skull was fractured. The cause of death is head injury.

5. The statement of Police Sub Inspector indicates that on 7-10-2022, when he was on patrolling duty, he received reliable information that a truck with iron rods was standing on the T-point of the road going from Karanbhad to Itgaon Khandala. The witness along with

two panchas reached the spot and apprehended applicant and co-accused at about about 23.30 Hrs. in the intervening night of 7th and 8th October, 2022. In enquiry, they confessed commission of offence.

6. The statement, thus, indicate that the applicant and co-accused were arrested in the intervening night of 7th and 8th October, 2022. They have allegedly confessed the crime. Despite such fact, the witness, who apprehended the applicant and co-accused, has not enquired as to where was body of driver kept. I am informed that driver's body was found at 4.00 p.m. on 8-10-2022. Thus body has been not discovered at the instance of the applicant.

7. Learned APP submits that spanner has been recovered at the instance of the applicant, under Section 27 of the Indian Evidence Act. The length of spanner is 40 cm. There was a black stain. She submits that the driver has been murdered with the help of spanner.

8. Learned APP however, failed to show any evidence in support. There is no eye witness to the incident. It is nobody's case that blood stains were found on the spanner nor is there anything to show that blood stains recovered at the spot have any nexus with the black stain on the spanner. The recovery of spanner, without establishing its nexus with the crime, is hardly of any significance.

9. Learned counsel for the applicant has rightly pointed out that except for the alleged confession of the applicant before the police, there is absolutely no

evidence against him. Needless to say that confession made before police is hit by Section 25 of the Indian Evidence Act.

10. Put altogether the evidence connecting applicant with the crime is weak. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned counsel for the applicant submits that there are no criminal antecedence against the applicant.

11. In view of above and considering the nature of evidence against the applicant coupled with 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.

12. The observations made in this order are *prima facie* and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

13. Resultantly, following order is passed

ORDER

- (i) The application is allowed.
- (ii) Applicant – Sunil S/o Gama Bhardwaj be released on bail in Crime No. 493/2022 registered with Police Station, Talegaon, District Wardha for the offences

punishable under Sections 302, 392, 201 read with Section 34 of the Indian Penal Code, on his executing P.R. Bond in the sum of ₹ 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 offence. The applicant shall not seek adjournments, 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.

14. The application is disposed of in the above terms

(Anil L. Pansare, J.)