



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

CRIMINAL APPLICATION (BA) NO.258 OF 2024

Surendrakumar s/o Kusumkumar Thosar

Vs.

State of Maharashtra, Through Police Station, Frezarpura, Amravati,
District Amravati

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

Court's or Judge's orders

Mr. T. U. Tathod, Advocate for applicant.
Mr. C. A. Lokhande, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/07/2024

1. The applicant came to be arrested on 02.09.2023 in connection with Crime No.705/2023 registered with Police Station, Frezarpura, District Amravati for the offences punishable under Sections 302, 201 and 120-B read with Section 34 of the Indian Penal Code.

2. The applicant came to be arrested on the basis of report lodged by Rajesh Devraoji Kothe brother of the deceased on an allegation that on 30.08.2023 when the complainant had gone in the market near the country liquor shop, one Sumit Kaware informed him that they have killed his brother Vilas Kothe for the reason that Vilas Kothe was having bad eye on the daughter of Jagdish Wakade and his dead body was lying in gairan land. It is further alleged that the complainant immediately

informed the said fact to one Pintu Amle. On 31.08.2023 the complainant along with Dinesh Patil and Pintu Amle had gone towards the gairan land in search of Vilas Kothe. They found one dig and there was some foul smell from that place. Thereafter, the police were called and the said place was dug and panchnama was conducted. From the said place, some bones as well as flesh were recovered. On the basis of the clothes, the brother of the deceased has identified the said clothes and thereafter, the FIR was lodged.

3. It is alleged that there was some money transaction between the present applicant and the deceased, out of that, present applicant has engaged the other co-accused and the other co-accused have eliminated the deceased by assaulting him. On the basis of said report, police have registered the crime against the present applicant as well as the other co-accused.

4. Learned Counsel for the applicant Mr. Tathod submitted that entire case is based on the circumstantial evidence. It is well settled that when case is based on the circumstantial evidence the entire circumstances are to be established by the prosecution. He submitted that except the statement under Section 27 of the Indian Evidence Act, of the present applicant, there is no other material to connect him with the alleged offence. Now, the

investigation is also completed and charge-sheet is filed, further custodial of the present applicant is not required, in view of that the applicant be released on bail.

5. Learned APP strongly opposed the application on the ground that there is sufficient material besides the statement of the present applicant under Section 27 of the Indian Evidence Act. He invited my attention towards the statements and submitted that there was extra judicial confession by the co-accused to various persons on various aspects. Thus, this extra judicial confession coupled with the statement of the present applicant under Section 27 of the Indian Evidence Act and the recovery of the articles at the instance of the present applicant as well as the statement of Digambar Wasudevrao Khobragade reveals the involvement of the present applicant in the alleged offence. Thus, *prima facie* case is made out against the present applicant. In view of that, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from the investigation papers it reveals that statement of the wife of the present applicant was also recorded, from which it reveals that there was a money transaction between the present applicant and the deceased and on the count

of said money transaction, there was a dispute between them and a police complaint was also lodged by the present applicant against the deceased.

7. During the investigation, various statements of the witnesses were recorded by the investigating agency from which it reveals to the investigating agency that present applicant has given some money to the co-accused to eliminate the deceased and in pursuance of the said conspiracy deceased was eliminated by the co-accused and thereafter, he was buried in a gairan land from which some bones are recovered. The extra judicial confession of the co-accused as well as the present applicant also discloses his involvement in the said offence. Admittedly, the extra judicial confession is a weak type of evidence, but when it is coupled with the other corroborating factors that can be taken into consideration. The statement of one Sandip Vishnupant Rodge shows that the co-accused has purchased salt which is of 5 Kg and said salt was used while burying the dead body of the deceased. The statement of Pankaj Rameshrao Doifode also shows that one of the co-accused has made extra judicial confession to him disclosing the involvement of the present applicant in the alleged offence. There is extra judicial confession to the Digambar Wasudevrao Khobragade also by one of the co-accused. On the basis of the statement of the present applicant, the incriminating articles are

seized which are used in the commission of the crime. Considering the manner in which the alleged incident has taken place and the manner in which the deceased was eliminated and the evidence in the nature of the extra judicial confession, at this stage, is sufficient to show the involvement of the present applicant with the alleged offence. The statement of Vaishali Kishor Juware also shows the involvement of the present applicant. Thus, *prima facie* case is made out against the present applicant, in view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order:

The application is rejected.

(URMILA JOSHI-PHALKE, J.)