



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

CRIMINAL APPLICATION (BA) NO. 389 OF 2024

Ganesh s/o Deorao Rohi 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. A.S. Mardikar, Senior Counsel with Mr. Digvijay Singh, counsel for the applicant.
Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/07/2024.

1. The applicant came to be arrested on 29/07/2023, in connection with Crime No. 256/2023 registered with Police Station Sakharkheda, District Buldhana for the offence punishable under Sections 302, 120B of the Indian Penal Code, 1860.

2. As per the allegation in the FIR, which is lodged against the unknown person, during the investigation and the statement of one Auto Rickshaw Driver, the involvement of the present applicant is revealed, and therefore, he was arrested. As per the allegation, on 27/07/2023 at about 6.30 p.m., the informant received information that the dead body of one man was lying in a pool of blood on a farm road in Sawadat Shiwar. On the basis of said information, the investigating officer reached at the spot, and he found the dead body of the deceased having head injury and decomposed. Initially, the crime was registered against an unknown person. During the investigation, the present

applicant along with the other four accused were arrested however, out of them, they were released as no evidence was there against them, and therefore, they were acquitted under Section 169 of the Code of Criminal Procedure. The involvement of the present applicant is completely based on the statement of the Auto Rickshaw Driver, who has brought the deceased, and the present applicant and one more co-accused on 26/07/2023 at about 08.30 p.m. at Sawadat Phata, as per the allegation, the deceased was not seen alive, and subsequently his dead body was found.

3. Learned Senior Counsel Mr. A.R. Mardikar submitted that, as far as the present case is concerned, which is completely based on circumstantial evidence. The two circumstances on which the prosecution relied upon is the statement of Auto Rickshaw Driver, who dropped them at Sawadat Phata and the applicant is identified by said Auto Driver during the identification period. He submitted that there is a long gap between the last seen by the Auto Rickshaw Driver, and the finding of the dead body. Even the report of the medical officer shows that death may have caused between 6 to 24 hours before the timing of the post mortem. Therefore, considering the long gap, the intervention by any third persons cannot be ruled out. He submitted that, as far as the test identification parade is concerned, which has no evidentiary value as the remand report, nowhere shows that when the applicant was produced before the Magistrate, his face was covered. The another circumstance on which the prosecution is relied

upon is the seizure of the clothes, at the instance of the present applicant. He submitted that it appears to be a farce one because the seizure memo shows the timing of the seizure at 2 p.m. whereas the memorandum statement recorded by the Investigating Officer also shows the timing 1.00 p.m. to 2.00 p.m.. Moreover, the clothes seized are not on blood-stained clothes, but considering the entire material collected by the investigating officer creates doubt regarding the involvement of the present applicant in the alleged offence. Now the investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant is not required, and prays for releasing the present applicant on bail.

4. Learned APP strongly opposed the said application on the ground that the applicant was lastly seen in the company of the deceased. Thereafter, nobody has seen the deceased alive. The applicant is identified by the Auto Rickshaw Driver, during the identification period. Thus, the material which is collected during the investigation shows the involvement of the present applicant in the alleged offence. Considering the gravity of the offence, the application deserves to be rejected.

5. After hearing learned Senior Counsel for the applicant and learned APP for the State, perused the entire investigation papers, from which it reveals that initial crime was registered against the unknown person. During the investigation, the statement of one Auto Rickshaw Driver

was recorded. As per the statement of the said Auto Rickshaw Driver, he has dropped the deceased and the present applicant. On 26/07/2023 at about 8.30 p.m. at Sawadat Phata, the dead body of the deceased was found on 27/07/2023 at about 6.30 p.m. The medical officers opinion shows that death of the deceased is between 6 to 24 hours before timing of the post mortem. The post mortem was conducted on 28/07/2023 at about 10.30 a.m. Thus, there appears to be a long gap between the last seen and finding of the dead body of the deceased. Therefore, the contention of the learned Senior Counsel for the applicant that the intervention of any third person cannot be ruled out. Thereafter, the prosecution relied upon on the identification period. The police remand nowhere shows that applicant was produced by taking care of covering his face, and thereafter, 8 to 10 days the test identification parade was held. Thus, the evidence as to the test identification parade is also shadow of doubt. Now investigation is already completed and charge-sheet is filed, admittedly at this stage, it is not necessary to assess the evidence, but considering that some doubt is created regarding involvement of the present applicant, and other co-accused is already released on bail, the present application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The application is allowed.

- b) In connection with Crime No. 256/2023 registered with Police Station Sakharkheda, District Buldhana for the offence punishable under Sections 302, 120B of the Indian Penal Code, 1860, applicant – Ganesh Deorao Rohi, shall be released on bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the vicinity of Sawadat, Tah. Sindhkhedraja, District Buldhana 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 before the trial Court without seeking unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]