



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

CRIMINAL APPLICATION (BA) NO.468/2024

Lucky s/o Anil Jagtap

..VS..

**State of Maharashtra, through PSO Dahegaon (Gosavi), P.S.Dahegaon (Gasavi),
District Wardha**

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

Court's or Judge's Order

Shri Amol Jaltare, Counsel for the Applicant.
Shri H.N.Prabhu, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 25/07/2024

PRONOUNCED ON : 30/07/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.143/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 302, and 450 read with 34 of the Indian Penal Code.

2. The applicant came to be arrested on 4.10.2023 and since then he is in jail.

3. The crime is registered on the basis of report lodged by father of deceased on an allegation that on 28.9.2023 the deceased disclosed about harassment at hands of the applicant out of one

sided love affair. The applicant is originally resident Yavatmal and several offences are registered against him at Yavatmal and, therefore, he came to reside at Nagalwadi, district Wardha. On 2.10.2023, the deceased and her family members were watching Television. At the relevant time, they heard a noise of opening of gate and, therefore, the deceased went to see who has opened the gate. At the relevant time, other family members heard a noise of shouting of the deceased and, therefore, they came out of the house and saw that an unknown person has given a blow of knife in her neck. The said person was aged about 20-25 years and two ladies were accompanying him. The said incident is also witnessed by neighbours. Due to the said blow on the vital part of the deceased, she succumbed to the injury.

4. Heard learned counsel Shri Amol Jaltare for the applicant and learned Additional Public Prosecutor Mrs.H.N.Prabhu for the State.

5. Learned counsel for the applicant submitted that the applicant was not present at the spot of the incident. There is no incident as to his involvement in conspiracy. There was love affair between him and the deceased. The deceased was insisting him to perform marriage with her. Other co-accused Prapti is his wife. As

he was married, he was not ready to perform the marriage with the deceased. The deceased was also insisting him that she is desiring to have a child from him. Due to the said love affair, his wife got angry. Insofar as conspiracy is concerned, statements of witnesses show that it was co-accused whose involvement revealed in the said conspiracy. As such, learned counsel submitted that there was no role of the applicant in the crime as he was not present at the spot of the incident.

6. In support of his contentions, learned counsel for the applicant placed reliance on the decisions of the Honourable Apex Court in the cases of **Maghavendra Pratap Singh alias Pankaj Singh vs. State of Chhattisgarh**, reported in 2023 SCC OnLine SC 486 and **Saju vs. State of Kerala**, reported in (2001)1 SCC 378.

7. *Per contra*, learned Additional Public Prosecutor for the State vehemently submitted that statements of witnesses show that at the time of hatching of the conspiracy, the applicant was present there. The conspiracy was hatched in his presence. He has neither opposed acts of the co-accused nor informed the deceased about the said conspiracy. The communications between him and the deceased show that there was love affair between them. The deceased was insisting to perform the marriage, but the applicant

was not ready. There was a motive for the applicant to be a part of the conspiracy to get relieved from the deceased and, therefore, in pursuance of the said conspiracy, the deceased was eliminated by the co-accused. Considering nature of evidence and gravity of the offence and a fact that death of the deceased is caused due to hemorrhage shock due to the assault, the application deserves to be rejected.

8. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused investigation papers, there is no dispute as to fact that the applicant was married with accused No.3 Prapti. There was love affair between the deceased and the applicant. The deceased was insisting the applicant to perform marriage with her. WhatsApp Communications between the deceased and the applicant show that the deceased was desiring to marry with the applicant and have a child from him. She was also insisting the applicant to break the relationship with his wife, however the applicant was not ready for the same. As regards the incident, admittedly, presence of the applicant was not there at the spot. However, during investigation, statements of witnesses namely Anna @ Aniket Mulchand Chamat and Ritik @ Ritesh Rajesh Balpande were recorded, from which it

revealed that the wife of the applicant came to know about the affairs between the applicant and the deceased. She called other co-accused at her house and hatched a conspiracy to eliminate the deceased. The applicant was present there at the relevant time. The applicant neither opposed his wife nor intimated the deceased regarding hatching of the conspiracy. It further revealed that all the accused collected their mobile phones and handed over to the other co-accused with an intention that the police should not search them on the basis of the said mobile phones. All these mobile phones were seized from co-accused Sandesh @ Badal Shende. One of co-accused Sachin Waghade purchased a knife by using Flipcart application. The wife of the applicant shown place of conspiracy during investigation.

9. In the decision of the Honourable Apex Court in the case of **Maghavendra Pratap Singh alias Pankaj Singh vs. State of Chhattisgarh** *supra*, as relied upon by learned counsel for the applicant, it is held that there is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. The investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness.

10. In the decision of the Honourable Apex Court in the case of **Saju vs. State of Kerala** *supra*, as relied upon by learned counsel for the applicant, it is held that to prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not illegal, by illegal means. It is immaterial whether illegal act is ultimate object of such crime or is merely incidental to that object. To attract applicability of Section 120-B, it has to be proved that all the accused had the intention and they had agreed to commit the crime. The conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. It has to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement, the necessary *mens rea* of the crime is also required to be established.

11. In the light of the above observations of the Honourable Apex Court, in the present case, statements of witnesses and subsequent conduct of the applicant show involvement of the

applicant in the conspiracy. The subsequent conduct of the applicant shows that he handed over his mobile phone to the co-accused with an intention to mislead the investigation agency that the investigation agency should not trace them. The other co-accused executed the act of eliminating the deceased. The conspiracy was hatched in presence of the applicant. As all these circumstances show a *prima facie* case against the applicant, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!