



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

CRIMINAL APPLICATION (BA) NO. 453 OF 2024

Ajay s/o Punjabgir Solanki 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. R.M.Daga, counsel for applicant.

Ms. Soniya Thakur, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/06/2024.

1. The applicant came to be arrested on 15/02/2023 in connection with Crime No. 86/2023 registered with Police Station Saoner, District Nagpur for the offence punishable under Sections 120-B, 364(A), 386, 302, 201 read with Section 34 of the Indian Penal Code, 1860.

2. As per the accusation, the deceased Dilip Dheraval was doing a business of Ayurvedic Medicine, and the applicant is related to the deceased, and co-accused Kewal Kothe is the friend of the applicant. They were having knowledge about the sound financial position of Dilip, and therefore, they hatch the conspiracy for extracting the money from the said Dilip. As per the plan of conspiracy, all accused persons met at Sanket lodged on 27/01/2023 and decided to extract Rs. 10 Lakhs from the deceased. In pursuance of the said conspiracy, on 30/01/2022, the accused Kewal called the deceased Dilip under the pretext of purchasing Ayurvedic Medicine, and thereafter, the deceased

was kidnapped in Ertiga Vehicle, and thereafter, he was assaulted by sticks and fist blows, and he succumbed to the death. Thereafter, the dead body was buried. The missing report was filed by one Pinki Swamy on 05/02/2023 who is the mother-in-law of the co-accused. The missing report was filed by wife of the deceased on 30/01/2023. During the inquiry into the missing report, the investigating agency suspected about the co-accused Kewal, therefore, he was arrested. During the interrogation with him, his statement was recorded. He has also shown the place where the dead body was buried and also disclosed the involvement of the present applicant in the alleged offence. As far as the investigation part is concerned, which shows that on the information given by the present applicant, the deceased was kidnapped and thereafter, he was assaulted, and met the co-accused in burring the dead body of the deceased.

3. Learned counsel for the applicant Mr. R.M. Daga for the applicant submitted that since the date of arrest i.e. on 15/02/2023, the applicant is behind bars. As far as the evidence collected during the investigation is concerned, is in the nature of circumstantial evidence. The prosecution case relied upon the circumstances like last seen. During the investigation, the various statements are recorded. As far as the evidence of last seen is concerned, which does not connect with present applicant with the alleged offence. The co-accused Kewal was lastly seen with the deceased along with other the co-accused. As far as the present applicant is concerned, only the statement of the co-accused and CDR

report, on the basis of which, the present applicant is implicated in the alleged offence. He submitted that there is no material to show that the applicant was part of the members, who hatched the conspiracy. Thus, now the investigation is completed and charge-sheet is filed, the entire circumstances on which the prosecution is relied upon are not sufficient to connect the present applicant with the alleged offence.

4. In support of his contention, the order passed by the Hon'ble Apex Court in the case of *Maniklal Mehta Vs The State of Bihar in Special Leave to Appeal (Crl.) No. 3490/2023 dated 16/05/2023*, wherein the Hon'ble Apex Court after considering the fact that the role attributed to the petitioner is that he was one of the conspirators and was in constant communication with the co-accused. The charge-sheet relies primarily on the conversation and some quarrel took place prior to the incident, and by observing that taking into account, the totality of the allegations, released the applicant on bail. He submitted that similar is the situation in the present case also, except the statement of the co-accused and the CDR Reports, there is no material to connect the present applicant to show that, he was part of the conspiracy, and in pursuance of the said conspiracy, he has eliminated the deceased.

5. Learned APP strongly opposed the said application on the ground that the statement of the co-accused and the CDR Report, consistently shows that it was the present

applicant, who was a member of the conspiracy, they hatched the conspiracy and in pursuance of the said conspiracy, eliminated the deceased.

6. She further submitted that co-accused Kewal and the other four accused were seen alongwith the deceased prior to he was missing. She further submitted that the CDR report shows the tower location of the present applicant and other co-accused in the Katol Area. The alleged incident has also occurred in the Katol area. Consistent calls between the present applicant and other co-accused are sufficient to show the association of the present applicant with the other co-accused. In view of that and considering the gravity of the offence, the application deserves to be rejected.

7. After hearing learned counsel for the applicant and learned APP for the State. The deceased was missing on 30/01/2023 and thereafter, his dead body was found on 07/02/2023. Prior to that, one Pinki Madhu Swamy has lodged the report about the said incident. On 05/02/2023, a missing report was lodged by Pinki Madhu Swamy, prior to that wife of the deceased has also lodged the missing report. During the inquiry of the missing report, the co-accused Kewal was arrested by the investigating agency. At his behest, the spot where the dead body was buried was recovered. The said dead body was beyond the identification but the brother has identified the said dead body. The statement of the co-accused Kewal was recorded. On the basis of which, the present applicant is arrested.

8. Admittedly, the statement of the co-accused is not admissible against the present applicant. As far as the present applicant is concerned, his association was shown with the co-accused, on the basis of the CDR report. Except the CDR report, there is no other material collected during the investigation to show that the present applicant was anywhere concerned or met the other accused to hatch the conspiracy. Un-disputedly, there would not be direct evidence available to show that the applicant was a member for hatching of the conspiracy, but at least there should be some material on record to show that he was associated with the co-accused to hatch the conspiracy. Thus, except for the CDR report, there is no other material collected during the investigation to show that the applicant was involved in the alleged offence.

9. As observed by the Hon'ble Apex Court in the case of ***Maniklal Mehta*** referred (supra), on which the learned counsel Mr. R.M. Daga placed reliance. Wherein also, the statement of the co-accused and the CDR reports are relied upon by the prosecution agency and the Hon'ble Apex Court observes that the statement of the deceased wife does not throw any suspicion on the petitioner. Besides, the charge-sheet has been filed and the trial is underway, and charge-sheet primarily shows the telephonic conversation and some quarrels which took place prior to the incident. Here, there was no previous enmity between the present applicant and the deceased. The charge-sheet primarily shows that CDR reports. However, that much material is not sufficient to

show the connection of the present applicant with the other co-accused. The applicant is not lastly seen with the deceased or there was no meeting of mine that appears to be revealed from the investigation papers. Considering that now the investigation is completed and the nature of the material which is collected by the investigating officer, the applicant deserves to be enlargement of bail. Therefore, I proceed to pass the following order;

- a] The criminal application is **allowed**.
- b] The applicant- Ajay s/o Punjabgir Solanki, shall be released on bail, in connection with Crime No. 86/2023 registered with Police Station Saoner, District Nagpur for the offence punishable under Sections 120-B, 364(A), 386, 302, 201 read with Section 34 of the Indian Penal Code, 1860, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall attend the concerned police station once in a month on first Sunday between 10.00 a.m. to 01.00 p.m., till conclusion of the trial.
- d] The applicant shall not leave the jurisdiction of the District Court Nagpur without prior permission of the Court.

- e] The applicant shall attend the proceedings before the learned trial Court without seeking exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]