



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

CRIMINAL APPLICATION (ABA) NO.413 OF 2023

Bagesh s/o Kondbarao Deshmukh and others
Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Risod,
District Washim and another

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

Court's or Judge's orders

Mr. N. B. Kalwaghe, Advocate for applicants.
Ms. H. N. Prabhu, APP for respondent No.1/State.
Mr. S. S. Shinde, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/04/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.393/2023 registered with Police Station, Risod, District Washim for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, the applicants approached this Court for grant of pre-arrest bail.

2. The accusation against the present applicants is on the basis of the FIR which is registered in view of the order passed by the learned Judicial Magistrate First Class, Risod under Section 156(3) of the Code of Criminal Procedure.

3. As per the prosecution case, the dead body of the deceased Devanand was found in the Well on

25.05.2022 regarding the same, the accidental death was registered. During the investigation of the said missing report, the Investigating Officer has recorded the various statements of the witnesses. After four days, the dead body of the deceased was found and on removing of the dead body from the Well, it reveals that one stone was tied around the waist of the deceased therefore, the investigating agency has suspected. In the meantime, mother of the deceased has lodged report, on the basis of which the crime was registered.

4. Learned Counsel Mr. Kalwaghe for the applicants submitted that except the suspicion there is no other material to connect the present applicants with the alleged offence. The statements which are recorded by the Investigating Officer are not sufficient to show the connection of the present applicants with the alleged offence. It was decided that on the day of incident when the deceased got missing i.e. on 22.05.2022, it was decided that he would have a dinner along with the present applicants, but the deceased never turned up for the said dinner and he got missing since afternoon on that day. He submitted that considering the nature of the material custodial interrogation of the present applicants is not required. As mere suspicion is not sufficient to connect the present applicants with the alleged offence and he prays for pre-arrest bail.

5. Learned APP for the State and learned Counsel for the respondent No.2 strongly opposed the application on the ground that there was illicit relations between the wife of the applicant No.1 and the deceased and therefore, deceased was eliminated by the present applicants. It is further submitted by the learned APP that during the enquiry of the merg report, the statements of the present applicants were also recorded from which it reveals that on the day of incident they met with deceased in the morning and decided to have a dinner with deceased. There was a telephonic communication between the wife of the applicant No.1 and the deceased and therefore, the present applicant No.1 suspected about their relationship and that was the reason for the applicant No.1 to eliminate the deceased. She submitted that considering the said, the investigation is to be carried out and therefore, the custodial interrogation of the applicants is required and prayed for rejection of the application.

6. Having heard the learned Counsel for the applicants and learned APP for the State as well as learned Counsel for the respondent No.2, perused the investigation papers. Admittedly, dead body of the deceased was found after four days, after he got missing. Initially, there was a missing report during the enquiry of the merg report the statements of various witnesses are recorded. Except the fact that the present applicants and deceased have decided to

have a dinner on that day, there is no other material to connect the present applicants with the alleged offence. From the statement of the wife of the applicant No.1 also only it reveals that there was communication between her and the deceased on the day of the incident, but from the statement it nowhere reveals that either the applicant No.1 has raised any suspicion or he met the deceased prior to the incident. On 22.05.2022 deceased and the applicants met in the early morning at about 8.00 a.m. and they decided to have a dinner but the statement shows that the deceased did not turn up, in fact, deceased got missing in the afternoon of 22.05.2022. Considering the various statements recorded by the Investigating Officer and CDR reports, no connection between the present applicants and the deceased revealed. In view of that, at this stage, no *prima facie* case is made out against the present applicants. There is no dispute as to the fact that the alleged offence is of a serious nature but to show the involvement of the present applicants there should be some material to connect them with the alleged offence. At this stage, even the statements are not sufficiently shows any connection between the present applicants and the alleged incident, the dead body of the deceased was found in the Well and cause of death is due to drowning. Considering all above facts, the applicants have made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in connection with Crime No.393/2023 registered with Police Station, Risod, District Washim for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, the applicant **No.(1) Bagesh s/o Kondbarao Deshmukh, No.(2) Vinod s/o Vitthalrao Deshmukh, No.(3) Mohan @ Sunil s/o Subhashrao Deshmukh, No.(4) Sharad s/o Pralhadrao Deshmukh and No.(5) Sandip @ Sanjay s/o Bhimrao Deshmukh** shall be released on anticipatory bail, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. till further orders and shall cooperate with the investigating agency.

(iv) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)