



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

CRIMINAL APPLICATION (BA) NO.724 OF 2024

Rajeshsingh s/o Surajsingh Thakur

..VS..

**State of Maharashtra, through Police Station Officer, Police
Station Mankapur, Nagpur**

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

Court's or Judge's Order

.....
**Shri S.V.Manohar, Senior Counsel assisted by Shri U.P.Dable,
Advocate for the Applicant.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) for the
NA/State.
Shri R.R.Vyas, Counsel assist to the prosecution.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 18/10/2024

PRONOUNCED ON : 23/10/2024

1. By this application, the applicant seeks regular bail in connection with Crime No.275/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 201, 302, 364, 504, and 506 read with 34 of the Indian Penal Code.

2. The applicant is arrested and since then he is in jail.

3. The crime is registered on the basis of a report lodged by Mehrunisha Khan Mobin Khan, who is mother of

Sana @ Heena Khan (the deceased) on allegations that her daughter was missing as she left house on 1.8.2023 and went to Jabalpur and, thereafter, she did not return back. It is further alleged that the deceased was having illicit relations with co-accused and prior to leaving the house, there was a quarrel between the deceased and the co-accused. The deceased started partnership with the co-accused and was talking with him frequently. On 2.8.2023, the deceased informed the informant's niece that she reached Jabalpur and from 2:30 pm of 2.8.2023, the phone of the deceased was switched off. The co-accused also informed her that the deceased had been to his house, but due to altercation, she left the house. The phone of the co-accused was also switched off.

4. During investigation, it revealed that during altercation, the co-accused thrashed the head of the deceased with metal baseball bat. He has conspiracy with other co-accused and the applicant assisted him for throwing dead body in a lake and other incriminating articles. With the help of the applicant, the co-accused disposed of the dead body along with incriminating articles. On the basis of the said investigation, the applicant was

arraigned as accused in the above said crime.

5. Heard learned Senior Counsel Shri S.V.Manohar for the applicant, learned Public Prosecutor Shri D.V.Chauhan for the State, and learned counsel Shri R.R.Vyas assisting the prosecution.

6. Learned Senior Counsel for the applicant submitted that except statement of the co-accused, there is no other material to connect the applicant with the alleged offence. As far as participation in the criminal conspiracy is concerned, there is absolutely no evidence against the applicant. He submitted that even accepting allegations as it is, offence attracted against the applicant is to the extent of Section 201 of the Indian Penal Code which is bailable offence. Now, investigation is completed and chargesheet is filed. Further, incarceration of the applicant in jail is not required.

7. Learned Public Prosecutor for the State submitted that from investigation papers, especially CDRs, it reveals that there was a communication between the applicant and the co-accused at the relevant time during commission of the offence. The Tower Location, Movement

Sheet, and Dump Data Figure reveal that the applicant accompanied co-accused at the relevant time. The record further reveals that the Tower Location of co-accused and the applicant reveals that they both were together and this incriminating material against the applicant reveals his involvement. The statements of witnesses show that the applicant called Sunil Jain and Harjat Rajput for seeking help on fateful night. This help was only to dispose of the dead body. After due investigation, dead body of the deceased was not found. It is not known whether she is alive or dead. The involvement of the applicant reveals from conspiracy. Considering manner in which the death of the deceased is caused and her dead body was disposed of, it is sufficient to show involvement of the applicant in the alleged incident.

Thus, considering the nature of the offence, the application deserves to be rejected.

8. After hearing learned Senior Counsel and learned Public Prosecutor for the State, it reveals that there were continuous calls between the applicant and the co-accused. Admittedly, the statement of co-accused is not admissible. However, circumstantial evidence on record shows that the

deceased had been to the house of the co-accused on 2.8.2023. There was hot exchange of words between the co-accused and the deceased. The presence of the deceased in the house is witnessed by some of witnesses.

9. The statement of Jitendra shows that the vehicle of the co-accused was having blood stains and it was clean by him.

10. The place where incriminating articles were thrown was discovered at the instance of the co-accused.

11. The CDRs show that the applicant was continuously along with the co-accused on 2.8.2023. The map prepared by the investigating agency shows that the applicant met the co-accused at Shahapura Vithoni on 5.46 pm and, thereafter, they travelled till Sports Club whereat co-accused was residing. Then, they proceeded to Bhamki whereat, allegedly, the dead body was thrown.

12. As far as conspiracy is concerned, admittedly, there is no direct evidence available against the applicant to show his involvement in the conspiracy. However, circumstances on record, are sufficient to show that the deceased had been to the house of the co-accused at

Jabalpur from Nagpur. She informed her relatives that she reached Jabalpur. The quarrel between the deceased and the co-accused was heard by witnesses. The circumstance, that blood stains are found on the vehicle of the co-accused, is cleaned by one of witnesses.

13. The CDRs and map prepared by the investigating agency show that the applicant was throughout from 7:32 am till 22.15 pm along with the co-accused. They travelled together to throw the dead body of the deceased and thrown dead body in Bhamki. Till today, the dead body was not found.

14. Thus, circumstances on record sufficiently show involvement of the applicant in the alleged offence. These series of acts and continuous presence of the applicant with the co-accused show more than his role shown by the investigating agency. As per the investigating agency, he assisted the co-accused to throw the dead body.

15. As far as criminal conspiracy is concerned, admittedly, no direct evidence is available.

16. The Hon'ble Apex Court, in the case of **Yash Pal Mittal vs. State of Punjab, reported in 1977(4) SCC**

540 held that very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others, it will not affect the culpability of those others when they are associated with the object of the conspiracy.

17. The Hon'ble Apex Court, in the case of **State of Tamil Nadu, through Superintendent of Police CBI/SIT**

vs. Nalini and ors, reported in 1999(5) SCC 253, also held that in reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out, cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even

if some of them have not actively participated in the commission of the crime.

18. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.

19. Insofar as investigation papers are concerned, the role of the applicant is not to the extent of disappearing the evidence. His presence with the co-accused since morning, till disposal of the dead body, on the basis of CDRs, is sufficient to show his involvement in the alleged offence and the act is not restricted to the extent of disappearance of the evidence. Whether he was involved in the conspiracy or not can be established on the basis of the evidence.

20. At this stage, considering fact that the death of

the deceased is caused when she was in the company of the co-accused and the applicant was also in the company of the co-accused.

21. Thus, considering *prima facie* material, it is not the case wherein the court should exercise its discretion in favour of the applicant.

22. In view of the above, the criminal application is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!