



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

CRIMINAL APPLICATION (BA) NO.775 OF 2024

Manthan Ashok Thakre

..VS..

**The State of Maharashtra, through PSO PS Jawahar Nagar, Tahsil and District
Bhandara**

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

Court's or Judge's Order

**Shri Atharva Manohar, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for the State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 04/09/2024

PRONOUNCED ON : 09/09/2024

1. By this application, the applicant seeks regular bail in connection with Crime No.305/2023 registered with the non-applicant/police station for offences punishable under Sections 201 and 302 of the Indian Penal Code

2. The applicant is arrested on 1.12.2023 and since then he is in jail.

3. The crime is registered on the basis of a report lodged by Nasim Mukesh Khodpe, the brother of Nayan (the deceased) alleging that on 27.11.2023 the deceased left his residence around

10:00 am and did not return back. On the basis of the same, a missing report was lodged on 28.11.2023. On 30.11.2023, dead body of the deceased was found in a stream approximately 12 kilometers away from Jawahar Nagar. The deceased was using mobile phone number 7057964924. On verifying CDRs, it revealed that he had maximum calls with one Prachi Giripunje. On enquiry with her, her involvement was revealed. During investigation, it was further revealed that there were phone calls from mobile phone numbers 9823641369 and 9175538621, which were of the applicant and, therefore, the applicant was taken into custody. During interrogation with the applicant, his involvement in abduction and elimination of the deceased was revealed. At the instance of the applicant, Mobile Sim Card in the name of the deceased was recovered. The memorandum statement of the applicant was recorded and at his instance, a rope was recovered. Statements of various witnesses were recorded, which connect the applicant with the alleged offence. On the basis of the investigation, chargesheet was filed against the applicant.

4. Heard learned counsel Shri Atharva Manohar for the applicant and learned Additional Public Prosecutor Shri N.B.Jawade for the State.

5. Learned counsel for the applicant submitted that the First Information Report was lodged against unknown persons. The dead body of the deceased was recovered after three days flouting in the stream. The applicant was arrested on 1.12.2023 without any evidence against the applicant with the investigating agency. All statements were recorded after the arrest of the applicant. CDRs show that location of the applicant and the deceased was different. There is no 65B Certificate along with CDRs. The entire case is based on circumstantial evidence and circumstances on which the prosecution relied upon are not sufficient to connect the applicant with the alleged offence. Now, the investigation is completed. Further incarceration of the applicant in jail is not required. As such, learned counsel for the applicant prayed that the application be allowed and the applicant be released on bail.

6. In support of his contentions, learned counsel for the applicant placed reliance on the decision of the Honourable Apex Court in the case of **Ravinder Singh @ Kaku vs. State of Punjab, 2022 LiveLaw (SC) 461** wherein it is held that where a case rests squarely on circumstantial evidence, an inference of guilt can be justified only when all incriminating facts and circumstances are

found to be incompatible with the innocence of accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principle fact sought to be inferred from those circumstances.

7. He submitted that the Honourable Apex Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyan, reported in (2020)7 SCC 1** held that certificate required under Section 65B(4) is a condition precedent to admissibility of evidence by way of electronic record, as correctly held in **Anvar P.R. vs. P.K.Basheer, reported in (2014)10 SCC 473**, and incorrectly “clarified” in *Shafhi Mohammed vs. State of Himachal Pradesh*, reported in (2018)2 SCC 801. Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.

8. *Per contra*, learned Additional Public Prosecutor for the State submitted that CDRs show connection of the applicant with the alleged incident. There was a previous enmity between the deceased and the applicant. The Mobile Sim Card, the deceased was using, was recovered from the applicant. Seizure of

the rope is also recovered at the instance of the applicant. The death of the deceased is due to strangulation. The query report shows that injury No.1 mentioned in column No.17 of the postmortem report is possible with such kind of weapon. Statements of witnesses show that prior to the incident, there was a quarrel between the deceased and the applicant as the deceased restrained the applicant from communicating with one Mansi Chakole and on that count, there was quarrel. Thus, there was a motive for the applicant also. Statement of Prachi was also recorded, who also stated that she had handed over her mobile phone to person who provide Mobile Airtel Sim Card for porting of the Mobile Sim. The said person disclosed her that the said Sim cannot be ported. Thereafter, she was not aware how the Sim in her name was prepared and sold to third person. Thus, statements of witnesses, recovery of the weapon, and the Mobile Sim Card of the deceased recovered at the instance of the applicant connect the applicant with the alleged offence.

9. After hearing learned counsel for the applicant, learned Additional Public Prosecutor for the State, and perused investigation papers, it reveals that death of the deceased is due to strangulation. A jute rope is recovered at the instance of the

applicant. The query report shows that injury No.1 in column No.17 of the postmortem report is possible with such kind of weapon. The Sim Card, which the deceased was using, was seized at the instance of the applicant. The statements of witnesses disclose that there was previous enmity between the applicant and the deceased. It is further revealed from statements of Abhishek Gabhne, Amit Pudke, and Akshay Khodpe that the applicant used to come in their village to meet one girl namely Mansi and the deceased objected him from communicating with the said girl. In the month of November 2022, there was a quarrel between them on that count and the deceased and witness Amit went to meet the applicant in his college. However, the applicant could not meet them in the college and, therefore, they met near Muslim Library whereat the applicant threatened the deceased. The similar statements are made by other accused also.

10. Statement of Umesh Bhonde shows that on 21.11.2023 one girl by name Prachi came at his shop along with her Mobile Jio SIM Card to convert it into the Airtel. When he was obtaining her thumb impression and live photo, for obtaining UPC Code, it revealed to him that her Jio SIM Card is not of three months old and, therefore, he disclosed her that it cannot ported

into Airtel. By using Aadhar Card of said Prachi, her live photo was obtained and on thumb machine, by using UPC Code, he prepared the Sim Card by porting it into Airtel and he handed over the said ported card to the applicant by obtaining Rs.200/-.

11. Thus, the evidence collected during investigation sufficiently shows that mobile number owned by Prachi was misused by the applicant with the help of Umesh Bhonde. By using the said Sim Card, he communicated with the deceased. The CDRs show that there was communication from Mobile Number 9823641369 to the Mobile Number of the deceased.

12. The another circumstance, that the Mobile Sim Card of the deceased was seized at the instance of the applicant is concerned, statements of witnesses show there was a previous enmity between the applicant and the deceased.

13. Learned counsel for the applicant submitted that CDRs was along with 65B Certificate and, therefore, it cannot be taken into consideration. Even if the said submission is accepted, statements of witnesses and circumstances, that the Mobile Sim Card of the deceased was recovered at the instance of the applicant, sufficiently show involvement applicant at this stage.

14. In this view of the matter, considering *prima facie* case against the applicant, the applicant deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!