



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

CRIMINAL APPLICATION NO.742 OF 2024 IN
CRIMINAL APPEAL NO. 408 OF 2024

Prafulla s/o Pandurang Shivankar

..VS..

State of Maharashtra

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

Court's or Judge's orders

Shri R.M. Daga, Advocate for the applicant.
Shri Joshi, Additional Public Prosecutor for the State.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 24/09/2024.

Heard.

2. This is an application seeking suspension of execution of sentence passed in the Sessions Trial No.130 of 2021, whereby applicant Prafulla Shivankar (accused no.3) has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ('IPC').

3. The case is based on the circumstantial evidence. PW1 Police Patil Ganeshram Margaye came to know on 23.06.2021 that a female dead body was lying at the road near Dhasgad on which he has lodged the report against the unknown persons. During the course of investigation, it was found that accused no.1 Samir, (husband of the deceased Saku) with the assistance of the applicant and co-accused Aasif Pathan had killed Saku.

4. Learned Counsel for the applicant would submit that the main allegation as well as the evidence is against the husband of the deceased namely Samir. As regards to

applicant Prafulla is concerned, the prosecution has relied on three circumstances which according to the defence are not reliable. The prosecution relied on the circumstances i.e. applicant Prafulla seen in the company of principal accused Samir one day prior to the discovery of dead body. Second circumstance is 9 phone calls in between Prafulla and principal accused Samir on the said day i.e. on 22.06.2021 and seizure of clothes and motorcycle.

5. Learned Counsel for the applicant would submit that the applicant Prafulla and Samir were acquainted with each other. Merely because one day prior of the discovery of the dead body they were seen together and had talks, definitely cannot lead a conclusion that the applicant participated in the crime. Moreover, it is submitted that the place where the applicant was seen with Samir was 60 kilometers away from the place, where dead body was found. It is also submitted that there were no blood stains on the clothes allegedly seized from the applicant.

6. Learned Addl.P.P. though submitted that these are the only circumstances however asserted that these are sufficient to fasten the guilt. According to him, continuous telephonic talk between them on crucial day would establish the link. We are not inclined to go in deeper to make comments on these aspects but certainly an arguable case is made out. If the applicant succeeds in appeal then the position would be irreversible. In the circumstances, we are inclined to exercise our discretion.

7. In view of the above, the application is allowed.

8. Execution of substantive sentence passed against applicant Prafulla Shivankar in Sessions Trial No.130 of 2021 stands suspended till the disposal of the appeal.
9. In the meantime, the applicant Prafulla Shivankar shall be released on bail on executing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.
10. The Trial Court shall issue release warrant after ensuring the entire fine as imposed against the applicant.
11. The application stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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