



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

CRIMINAL APPLICATION (BA) NO. 802/2023

Satish Ramesh Bankar 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. A.A. Naik, counsel with Mr. A.S. Manohar, counsel for the applicant.
Mr. V.A. Thakre, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/02/2024.

1. The present application is preferred by the applicant who is accused No. 1 for grant of bail in connection with Crime No.607/2021 registered with Police Station, Gondia (City), District Gondia, for the offences punishable under Sections 302 of the Indian Penal Code, 1860 and under Sections 3 and 27 of the Arms Act, 1959. The applicant is arrested on 21.08.2021 and since then he is behind the bar.

2. The accusation against the present applicant is on the basis of report lodged by the wife of the deceased, that on 21/08/2021 at about 7.30 a.m., her husband left the house for proceeding the Gym. At about 7.55 a.m., one Shyam Kundnani came to her house and disclosed to her that he has seen her husband in an injured condition lying behind the circus ground. He further disclosed that he had witnessed one person running from the spot. Accordingly, she informed the police that some unknown persons have

assaulted her husband by firing a bullet. On the basis of said report, the police have registered the crime against the unknown persons. During the investigation, the Investigating Officer has arrested the accused along with the other three accused. As per the allegation in the FIR and during the investigation it was revealed that the present applicant was hired co-accused Prakash Sharma to kill the deceased, due to the business rivalry between them as the said Prakash Sharma is the owner of the Gym and the deceased was also constructing the gym adjacent to the said gym. It is further alleged that the present applicant is one of the conspirators and the executor of the said plan and accordingly, he eliminated the deceased. On the basis of the investigation, the applicant is arrested.

3. Learned counsel Mr. A.A.Naik submitted that the entire case is rested on the circumstantial evidence. During the investigation, the Investigating Officer has recorded the statement of *Yogesh Dinesh Bankar* who is the relative of the present applicant. As per his statement, this applicant called him on his mobile phone, and disclosed him to that he has committed the murder of one person who is unknown to him by firing a bullet towards him. Thereafter, this Yogesh Dinesh Bankar suggested him to surrender before the Police and accordingly, he called one Police Constable- Chagan Vithole and surrendered before him along with present applicant and co-accused Deepak Pyrelal Bhute. They were taken into custody by the police machinery. The another statements on which the prosecution is relied upon Dinesh

@ Balu Videsh Ukey, who has also supported the contention stated by Yogesh Dinkar Bhute and Chaganlal Laxman Vitthale, who is the Police Constable, and also stated that he received the phone call of Yogesh, he went there and after surrendering them they have taken into custody. The statement of Tejram Jiyalal Khandalkar also shows that he received the phone call of the present applicant on the day of incident.

4. Learned counsel submitted that another circumstance of which prosecution relied upon is the seizure of clothes of the accused, wherein no blood stains are seen by the investigating agency. The alleged weapon of the offence is found at the spot of incident only. He further submitted that CCTV footage is collected by the investigating agency to show the connection of the present applicant with the alleged incident, wherein it is seen that the applicant and co-accused Deepak Pyrelal Bhute were proceeding on a motorcycle and present applicant had covered his face by Saffron Colour Dupatta. The said Dupatta was alleged to be seized at the instance of the present applicant.

5. He invited my attention towards the statement of one Krushna @ Shyam Nandlal Kundanani, from the same it revealed that he has seen one person running from the spot of incident who was covering his face by the Saffron Colour Dupatta. He submitted that, it is pertinent to note that, if the person has covered his face by the Saffron Colour

Dupatta, then it is difficult for the said witness to identify the present applicant. The applicant is arrested on 21/08/2021. On the same night, the hand wash of the applicant was collected however, the same was forwarded to the Chemical Analyser on 05/09/2021 i.e. after 15 days.

6. He submitted that the statements of the witnesses show that after the incident, the applicant travelled upto Amgaon. Thereafter, he had breakfast and surrendered himself. This story is difficult to accept, as during this period, the applicant has touched various articles. Apparently, statement of witness Tejram Khandalkar shows that the applicant had breakfast and thereafter, surrendered himself before the Police. In view of that, the contention of the prosecution that they have collected the hand wash is improbable.

7. He further submitted that as far as the extra judicial confession to witness - Yogesh Dinesh Bankar is concerned, whose statement is recorded after three months i.e. on 09/11/2021, his statement shows that, he has taken the present applicant at the police station and one Police Constable Chagan Vithole was also along with him. So, on 21/08/2021, not only the Yogesh Dinesh Bankar but Dinesh @ Balu Videsh Uke and the said Vithole were present in the Police Station. Their statements are not recorded immediately even not on the second day, but recorded after three months. Therefore, the evidence regarding the extra

judicial confession also appears to be fabricated and prepared after thought.

8. He submitted that considering the nature of evidence, sufficiently shows that the story is after thought and there is no material to connect the present applicant with the alleged offence. The other conspirators are already released on bail. Now, investigation is completed and charge-sheet is filed, further custodial interrogation of the applicant is not required and no purpose will be served by keeping him behind bar.

9. Learned APP strongly opposed the application on the ground that, on the day of incident, witness – Krushna disclosed that he has witnessed one person running from the spot. His statement was recorded immediately on 21/08/2021. The witnesses namely Yogesh Dinesh Bankar and Chaganlal Laxman Vithale stated that they have brought the applicant at the Police Station, and he was arrested. Immediately on the same day, his hand wash was obtained after his arrest and it was forwarded to the Chemical Analyser.

10. He further submitted the C.D.R. report shows the communication between the present applicant and other co-accused. The statements recorded during the investigation, further show that the applicant was in search of weapon and he has purchased the said weapon. The Chemical Analyser report shows that the hand wash which was examined by the Chemical Analyser, the results of which are positive.

Thus, there is prima-facie material to connect the present applicant with the alleged offence. In view of that, application deserves to be rejected.

11. Learned counsel for the complainant also endorsed the same contention and submitted that the statement of Krushna @ Shyam Nandlal Kundanani itself is sufficient to show the involvement of the present applicant in the alleged offence. Considering the gravity of the offence and the involvement of the present applicant, the bail application deserves to be rejected.

12. After hearing learned counsel for the applicant and after going through the investigation papers, admittedly, the entire case of the prosecution rested on the circumstantial evidence. The first general diary entry which is taken by Police into Police Station at Gondia City on 21/08/2021 at about 11.12 which shows that the some unknown person has fired a bullet on the deceased, and the deceased succumbed to death. During the investigation on 21/08/2021 itself, the applicant was arrested. Immediately, his clothes were seized by the Police. No foreign material was found on the clothes of the present applicant, at the time of seizure. During the investigation, the investigation officer has also drawn the CCTV Footage Panchanama. As per the recitals of the said panchanama, the two persons were seen on the motorcycle, one is the present applicant covering his face by the Saffron Dupatta. The said Saffron Dupatta was seized during the investigation, on the basis of

memorandum statement of the accused- present applicant. The statements of the various witnesses are also recorded. As per the prosecution, the applicant has called his relative Yogesh and made extra judicial confession that he has committed murder of one person by firing a bullet on him. The statements of some of the witnesses also show that the applicant was in search of Firearm and he has purchased the same.

13. To support the said contention, the prosecution placed reliance on the statements of Prakash @ Rinku Dhannalal Bansod, Somesh Dilip Lonarkar and Aatish Shankar Rahangdale. The statement of Prakash @ Rinku Dhannalal Bansod shows that the applicant approached to him in January-2021 and he was in search of one firearm. The reason stated by this witness for purchasing the firearm that the present applicant was having some illicit relations with one lady, and her family members are not allowing her to meet that lady and therefore, he was intending to purchase the said firearm. The statement of Aatish Shankar Rahangdale shows that the applicant has handed over amount of Rs. 20,000/- to him on 28/12/20019 to purchase the said firearm. Admittedly, the CDR reports are on record, which show that there was communication on 21/08/2021 between the present applicant and co-accused Deepak Pyrelal Bhute. As far as the communication with the other co-accused is concerned, which is of January-2021 i.e. much prior to the date of incident. The C.A report admittedly shows that the hand wash was obtained from the present

applicant and his results are positive. However, it is pertinent to note that the said hand wash was collected by the Medical Officer on 21/08/2021 and it is forwarded to C.A. on 05/09/2021 i.e. after 15 days of the incident.

14. Learned counsel Mr. A.A. Naik vehemently submitted that as far as the material in the nature of extra judicial confession is concerned, is a very weak type of evidence, therefore, it cannot be accepted, but it is to be corroborated by some material.

15. In support of his contention, he placed reliance in the case of *Tejinder Singh alias Kaka Vs State of Punjab*¹, wherein the Hon'ble Apex Court dealt with the issue of the extra judicial confession and held that the extra judicial confession is a weak form of evidence and based on such evidence, no conviction and sentence can be imposed upon the appellants and other accused.

16. Regarding the delay in recording the statement, he placed reliance on the case of *Harbeer Singh Vs Sheeshpal and others*², wherein the Hon'ble Apex Court by referring the judgment in the case of *Ganesh Bhavan Patel vs State of Maharashtra*³, held that the said judgment is an authority for proposition that delay in recording of the statements of the prosecution witnesses under Section 161 Cr.PC, although those witnesses were or could be available for examination when the investigating officer visited the scene

1 2013 CRI. L.J. 3130

2 (2016) 16 SCC 418

3 (1978)4 SCC 371

of occurrence or soon thereafter, would cast a doubt upon the prosecution case.

17. On the basis of above submissions and the decisions relied upon, learned counsel submitted that, the entire story narrated by the prosecution is improbable and unacceptable, and the involvement of the present applicant does not reveal from the said circumstantial evidence. There is incomplete chain to connect the present applicant with the alleged offence. Now, the investigation is completed and no purpose would be served by keeping the present applicant behind bar.

18. On perusal of the entire investigation papers, it reveals that the case of the prosecution rested upon the circumstantial evidence in the nature of extra judicial confession by the present applicant to one Yogesh Bankar, seizure of the clothes of the present applicant and a Saffron Colour Dupatta on the basis of statement under Section 27 of the Indian Evidence Act. The another circumstance on which the prosecution relied upon is the CCTV Footage wherein co-accused and present applicant are seen together proceeding on the motorcycle, and the statements of the witnesses who deposed regarding attempt to procure the firearm and the statement of witness Krushna @ Shyam Nandlal Kundani, who has witnessed the present applicant running from the spot of incidence.

19. Admittedly, at the stage of bail, the detailed evaluation of the evidence is not required. However, while

considering the bail application whether the prima facie case is made out or not is to be seen and for that purpose, the reference of the material is required. In the present case, the prosecution has recorded the statement of Yogesh Bankar, to whom the extra-judicial confession is made by the present applicant. As per his statement, the present applicant made a phone call, and disclosed that he had committed a murder of one unknown person. This extra-judicial confession is to be taken into consideration in the light of the prosecution case that the present applicant and other co-accused hatched the conspiracy to eliminate the deceased. If the applicant was a member to the said conspiracy, then it is difficult to accept that he was not aware to whom he has eliminated and he was unknown about the name of the person, to whom he has eliminated. Moreover, the statements of these witnesses though they were available on 21/08/2021 recorded after three months i.e. on 09/11/2021, it is well settled that there is neither any Rule nor Law that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Court has to consider the evidence of extra-judicial confession which comes from the mouth of the witness/witnesses who appeared to be unbiased, not even remotely inimical to the accused and in respect of whom, nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witnesses are clearly, unambiguous and unmistakably

convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may be deleted against him, then after subjecting the evidence of the witness to a rigorous test on the touchstone of the credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of the conviction.

20. The another circumstance on which the prosecution has relied upon is the seizure of the clothes, wherein no incriminating material is found. The saffron colour dupatta was seized at the instance of the present applicant, if this fact is accepted then the statement of Krushna @ Shyam Nandlal Kundani is difficult to accept, as he nowhere states that when he has seen the present applicant running from the spot of incidence he was wearing any scarf on his face.

21. The fact from the statements of the other witnesses regarding procuring of the firearm is also difficult to accept as the applicant was attempting to procure the firearm long back from the incident i.e. in the month of January 2020, whereas the dispute between the deceased and the accused No.3 i.e. Prakash Sharma started in July 2021. So, this evidence is also difficult to accept to show the connection of the present applicant to hold that he was procuring the said firearm to eliminate the deceased. It is pertinent to note that, no investigation is carried out regarding the source of information in respect of the present applicant in the alleged offence, as allegation against the present applicant is that he was hired to eliminate the deceased by co-accused Prakash

Sharma. There is no evidence on record to show that either he has received any amount or there was some association of him with co-accused Prakash Sharma. The co-accused are already released on bail, two are also the conspirators. Considering the material collected during the investigation, the circumstances which are not in the complete chain of circumstances, considering the same, at this stage, the applicant has made out a case to release him on bail. In view of that, the application deserves to be **allowed** by imposing certain conditions. Accordingly, I pass the following order:

- a) The criminal application is allowed.
- b) The applicant- **Satish Ramesh Bankar**, connection with Crime No.607/2021 registered with Police Station, Gondia (City), District Gondia, for the offences punishable under Sections 302 of the Indian Penal Code, 1860 and under Sections 3 and 27 of the Arms Act, 1959, shall be released bail, on executing P.R. bond in the sum of Rs. 50,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the Police Station, Gondia City twice in a month on 1st and 15th day of every month between 10.00 a.m. to 01.00 p.m. and the investigating officer shall record his presence.

- d) The applicant shall furnish his cellphone number(s) and address with the address proof along with the two names of his two relatives and address with address proof.
- e) The applicant shall not leave the jurisdiction of District court Gondia without prior permission of the court.
- f) The applicant shall not induce, threat or promise to any witnesses who are acquainted with the facts of the present case.

The criminal application is **dispose of**.

[URMILA JOSHI-PHALKE, J.]