



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

CRIMINAL APPLICATION (BA) NO.1121/2024

Prakash Chamrural Bhautik

Vs.

State of Maharashtra thr. P.S.O., P.S., Salekasa, District Gondia

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

Court's or Judge's orders

Mrs Mehta, Advocate h/f Shri D.N. Mehta, Advocate for applicant
Ms Kavita Bhondge, APP for Non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/12/2024

The applicant came to be arrested on 16/12/2023, in connection with Crime No.390/2023, registered with Police Station, Salekasa, District Gondia, under Sections 302, 201 of the Indian Penal Code. The crime is registered on the basis of the report lodged by wife of the deceased on an allegation that present applicant was the friend of the deceased who is her husband. On 17/10/2023, applicant gave a call to the deceased and therefore, deceased went along with the present applicant. At about 11:00 p.m. present applicant again visited her house and therefore, she inquired about her husband Rakesh. But he informed that Rakesh will come home but Rakesh did not return home and on 20/10/2023, the dead body of the deceased Rakesh was found flowing in the water in a decomposed condition. She made inquiry with Kewal Dhurve and it reveals to her that present applicant has eliminated the deceased and therefore, she lodged report against him. On the basis of the said report Police have registered the crime against the

present applicant.

2. Heard Learned Counsel for the applicant, who submitted that entire case is based on the circumstantial evidence. The circumstance that the deceased went along with the present applicant and thereafter, not returned back that is the last seen circumstance, the statement of the present applicant recorded under Section 27, to the extent of discovery of fact, memorandum statement on the basis of which, the rope was seized and the extra judicial confession of the present applicant, there is no other material to connect the present applicant with the alleged offence. She submitted that though wife of the deceased has stated that the deceased went along with the present applicant, but the statement of the mother of the deceased nowhere states that deceased went along with the present applicant. She also invited my attention towards the various statements recorded by the Investigating Officer including the statement of Kewal Ramchandra Durway, who was along with the applicant and deceased on the day of incident as well as Tilak Sukhdas Uprade. She submitted that from the statements of the witnesses only it reveals that they were together on the day of incident and they consumed the liquor together and thereafter they left the place and when again they went in the agriculture field of said Tilak, the dead body of the deceased was found in the agriculture field. It is submitted that even the statement of these two witnesses nowhere states that who has removed the dead body from the said

agriculture field. Thus, she submitted that entire case is rested on the circumstantial evidence and circumstances on which, prosecution relied upon are not sufficient to show the involvement of the present applicant in the alleged incident. Now, investigation is already completed, charge sheet is already filed, further incarceration of the present applicant is not required, in view of that he be released on bail.

3. Learned APP strongly opposed the said application and submitted that the deceased went along with the present applicant and not returned back at home, his dead body was found in a decomposed condition. The statements of the witnesses shows that they were together. Thus, not only the last seen evidence but the statement of the witnesses as well as extra judicial confession of the present applicant sufficiently shows the involvement of the present applicant in the alleged incident. In view of that application deserves to be rejected.

4. After hearing both the sides and on perusal of investigation papers it reveals, admittedly, the case is rested on the circumstantial evidence, though the wife of the deceased has stated that on the day of incident the present applicant had been to her house and took deceased along with him but the statement of the mother of the deceased is silent about the same. She has only stated that the deceased was in a habit of leaving the house without informing anybody and therefore, they have not made any complaint or missing report to the Police Station. She nowhere

stated that present applicant had been to her house and thereafter deceased went along with him. As per prosecution story, at the relevant time one Kewal and Tilak were along with the deceased as well as the present applicant. The statement recorded under Section 164 of Kewal Dhurve, only states that he has seen the dead body of the deceased in the agriculture field at Gallatola. The statement of said Tilak is only to the extent that he has seen the dead body of the deceased in his agriculture field and at that time the applicant and Kewal Dhurve were present in the agriculture field. The statement of Kewal Dhurve also states that initially he along with the present applicant and the deceased had food together they consumed the liquor and thereafter they left the place and after some time they have seen the dead body of the deceased in the agriculture field. His statement further shows that though they have obtained their share of a meat, which they have purchased, but the deceased was lying in the agriculture field as he has consumed the liquor and they have dropped the said share at their house and after some time when they again went in the agriculture field they found deceased in dead condition. Thus, as far as the investigation material is concerned, entirely case is rested on circumstantial evidence, but except the last seen and the extra judicial confession, there is no other material to connect the present applicant with the alleged offence. As far as the last seen and the extra judicial confession material is concerned, which is a very weak type of

evidence. Considering now investigation is already completed, charge sheet is already filed, further incarceration of the applicant is not required, in view of that application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) Application is allowed
 - (ii) The applicant – **Prakash Chamrual Bhautik**, shall be released on bail in connection with Crime No.390/2023, registered with Police Station, Salekasa, District Gondia, under Sections 302, 201 of the Indian Penal Code, on executing P.R. Bond of Rs.25,000/-, with one solvent surety, in the like amount.
 - (iii) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.
 - (iv) The applicant shall not enter into the vicinity of village Pipariya, Taluka Salekasa, District Gondia, till culmination of the Trial.
 - (v) The applicant shall attend the proceedings before the Sessions Court without seeking any exception unless there are exceptional circumstances.
5. The application is disposed of.

JUDGE

Jayashree....