



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

CRIMINAL APPLICATION (BA) NO. 1091 OF 2023

Mani Kalipad Bishwas

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Bhadrawati,
District Chandrapur

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

Court's or Judge's orders

Mr. A. C. Jaltare, Advocate for applicant.

Mr. A. G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 30/01/2024

1. The applicant came to be arrested on 06.05.2023 in connection with Crime No.140/2023 registered with Police Station, Bhadrawati, District Chandrapur for the offences punishable under Sections 302, 458, 460 380 and 201 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Mangesh Bapurao Kharkar alleging that on 23.03.2023 at about 6.00 a.m. when he was at his house, he received a phone call of Avinash Pundlik Satpute from his village, who informed him that his father and one Madhukar Khuje were found dead in the temple and the door of the temple was opened. He immediately rushed to the spot and saw that his father was lying in the pool of blood, whereas the

other deceased Madhukar Khuje was also lying in the pool of blood. The donation box in the temple was missing and the amount of the donation box was also stolen. It is alleged that while committing the dacoity of stealing the amount from the donation box and the golden ornaments of the idol, the two persons were murdered. The FIR was lodged against the unknown persons. During the investigation, the involvement of the present applicant was revealed and, therefore, he was arrested.

3. Learned Counsel Mr. Jaltare for the applicant submitted that the entire case rests on the circumstantial evidence and only two circumstances are appearing against the accused/applicant, one is recovery of the shockupser rod at the instance of the present applicant and another is the CDR report. The CDR report is not at all helpful to the prosecution, as the location shown in the CDR report of the present applicant is 11 Km away from the spot of the incident. The location shown on the intervening night when the alleged incident has taken place is shown to be at 21:56:40 at Karnataka Empta Coal Mine At/Post Belora, District Chandrapur. At about 22.07:51 it was shown at the similar place and directly at 03.53.25 i.e. early in the morning, it is shown at the house. So, none of the tower location of the applicant are showing his presence at the spot of incident or near the spot of incident. The spot of incident from Karnataka

Empta Coal Mine at 11 Km. Thus, this circumstance is also not helpful to the prosecution to show the involvement of the present applicant in the alleged offence. He further submitted that during the investigation the shockupser rod is seized at the instance of the present applicant. The opinion of expert though shows that injury sustained by one of the injured namely Bapurao Sambhaji Kharkar may cause due to the Shockupser rod, but the opinion of the expert itself shows that no blood stains or visible foreign body was present on the said shockupser. The CA report is yet to be received. Now, investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. He further submitted that though the investigating agency has shown his involvement in various crimes, but in most of the crimes the applicant is acquitted and now, only two offences are pending against him. In view of that, the applicant be released on bail.

4. The learned APP strongly opposed the application on the ground that there are criminal antecedents against the present applicant. During the investigation, the involvement is revealed on the basis of CDR report and the recovery of the incriminating articles at the hands of the present applicant. The investigating agency has also collected the Google map which shows the presence of the present applicant at the spot of the

incident. In view of that, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. The iron rod is recovered at the instance of the present applicant. As per the expert opinion, the injury sustained by one of the deceased is possible by the said weapon. However, it is specifically mentioned that no blood stains or visible foreign body was found when the weapon was examined by the Medical Officer. The another circumstance on which the prosecution relied upon is the CDR report. As per the prosecution, the alleged incident has taken place in the intervening night of 22.03.2023 and 23.03.2023. The tower location on which the prosecution placed reliance on is the CDR report collected regarding the mobile phone of the present applicant. As per the said tower location report on 22.03.2023, the location of the applicant as 21:56:40 i.e. 9 p.m. 56 minutes and 40 seconds shown to be at Karnataka Empta Coal Mine At/Post Belora. The subsequent location at 22:07:51 i.e. at 10 p.m. 7 minutes 51 seconds at the same place, which is 11 Km away from the place of the incident and thereafter, directly the tower location was shown at 3 a.m. 53 minutes 25 seconds at the house of the present applicant. Though, the prosecution placed reliance on the Google map, but the said Google map neither

showing the exact timing nor the exact place where the presence of the applicant was marked. Thus, the circumstances on which the prosecution relied upon is the incomplete chain, which appears from the investigation papers. It is well settled that when the prosecution placed reliance on the circumstantial evidence, the circumstances should be of such a nature which shows the complete chain, any missing chain will benefit the accused. As far as the criminal antecedents are concerned, learned Counsel for the applicant placed on record the various case details showing that in most of the cases, the applicant is acquitted and the cases are disposed of. At present, only two cases are pending against the present applicant. It is well settled that mere criminal antecedent is not sufficient to keep him behind bar. Considering the nature of the evidence, which is collected during the investigation and now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Mani Kalipad Bishwas** be released on bail in connection with Crime No.140/2023 registered with Police Station

Bhadrawati, District Chandrapur for the offences punishable under Sections 302, 458, 460 380, 201 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the Bhadrawati Police Station twice in a month on 1st and 15th of every month and the Investigating Officer shall record his presence.

(iv) The applicant shall not leave the jurisdiction of the Chandrapur District without prior permission of the Court.

(v) The applicant shall not involve himself in such type of criminal activities.

(vi) The applicant shall furnish his cell phone number and address with the address proof along with the name of his two relatives along with their cell phone numbers and their address proof.

(vii) Contravention of any of the terms and conditions of the above order, the bail granted to the applicant deserves to be cancelled.

(URMILA JOSHI-PHALKE, J.)