



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

CRIMINAL APPLICATION (BA) NO. 09 OF 2024

Mahesh s/o Motilal Balhariya 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. H.P. Lingayat, counsel for the applicant.

Mrs. H.N.Prabhu, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/04/2024.

1. The present applicant came to be arrested on 10/11/2016, in connection with Crime No. 275/2016 registered with Police Station Ajni, Tahsil and District Nagpur for the offence punishable under Sections 363, 302, 452, 201, 120-B of the Indian Penal Code, 1860, Sections 4 and 25 of the Indian Arms Act and Section 135 of the Maharashtra Police Act, 1951.

2. The crime is registered on the basis of report lodged by Gautam Nagorao Khadatkhar to the Police Ajani on 2.9.2016 alleging that his sister Vandana and brother-in-law Atul Pandharinath Vaidhya got missing. It is further alleged that on 29/08/2016, two people namely Karmarkar and Shambharkar approached to him at his house at Hinganghat District Wardha and disclosed that they are friends of Vandana's husband namely Atul Vaidhya, and expressed their desire to meet Atul Vaidhya and Vandana Vaidhya on which, the informant informed them that they both are residing at Kashinagar, Nagpur. One of the persons namely Shambharkar intimated to him, that since

12/08/2016 both are missing and the house where they were residing is demolished and it was informed that both are residing at Hinganghat, hence, they came to meet them. In response to that, the informant told them that both Atul and Vandana had not visited Hinganghat for two months and thereafter, he had not seen them personally and was not in contact with them on the phone and was in contact with them on phone only. Both the persons informed the informant, that Kiran Mahale i.e. co-accused had purchased the said house where Atul and Vandana were residing and was taking them to vacate the house.

3. It is further alleged that on 30/08/2016, when he visited the house of his another sister namely Sindhu Zilpe, and enquired them about Vandana and Atul Vaidhya, he came to know that they visited her last on 8/8/2016 and she was told that Vandana that the plot situated at Kashinagar where they were residing was sold by her mother-in-law to Kiran Namderao Mahale and both were threatened to vacate the said house therefore, they were under the apprehension of death. The informant further contended that they enquired about Vandana and Atul Vaidhya with their relatives, but they could not trace them. Therefore, he visited the Police Station and lodged the report. The police visited the plot at Kashinagar for inquiry and found that the house where they both were residing was demolished and possession was taken by one Kiran Mahale. Therefore, the informant has raised suspicion alleging that his sister Vandana and her husband are missing since 12/08/2016 and Kiran Mahale i.e. co-accused might have abducted and

detained them. On the basis of the statement, the crime was registered against the present applicant. During the investigation, it revealed to the investigation officer that the co-accused Kiran Mahale hatched the conspiracy with the present applicant and other co-accused and in pursuance of the said conspiracy, they have eliminated the deceased Vandana and the Atul. Therefore, the present applicant is arrested.

4. Learned counsel for the applicant submitted that since the date of his arrest i.e. since 10/11/2016 except four months during the period of Covid, the applicant was released, the applicant is behind bar. There is no progress in the trial, only two witnesses are examined till today. The charge is framed on 03/03/2018. The applicant is behind bar for an indefinite period and there are no chances to conclude the trial in the near future. He submitted that, on merits also, the co-accused Kiran Mahale at whose initiation allegedly the criminal conspiracy was hatched is already released on bail. The similar role is attributed to the present applicant, in view of that on the ground of parity also, the present applicant required to be released on bail.

5. He further submitted that the entire case of the prosecution is relied upon circumstantial evidence. As far as the present applicant is concerned, the only evidence against him, his statement under Section 27 of the Indian Evidence Act and the recovery of dead body at his instance. Considering the fact that there is an inordinate delay in the trial, and the applicant cannot be put behind bar for an indefinite period, the applicant

be released on bail and he would abide by all the conditions imposed by this Court.

6. Learned APP strongly opposed the application on the ground that considering the gravity of the offence that two persons were abducted and eliminated by hatching the conspiracy, the present applicant was member of the said conspiracy, in view of that the application deserves to be rejected. She further submitted that the circumstantial evidence i.e. recovery of the dead body at the instance of the present applicant, and his statement under Section 27 of the Evidence Act, 1872 sufficiently shows his involvement in the alleged offence. In view of that, the application deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State. There is no dispute as to the fact that the co-accused Kiran Namdeorao Mahale is already released on bail by the Sessions Court by passing order below Exhibit 108, dated 02/01/2023. The Sessions Court has observed in the said order that the entire case papers shows that the applicant therein was behind the killing of the deceased as he wanted to get the premises vacated of the property purchased from the father of the deceased Atul. Admittedly, his presence is not revealed on the spot at the time of the incident and the allegations of conspiracy are leveled against them. By observing the same and considering the fact that the father of the co-accused had undergone cancer surgery and he was released on bail.

8. On perusal of the investigation papers, it reveals that the allegation against the present applicant is that he was the member to the said conspiracy. During the investigation, it revealed to the investigating officer that co-accused asked the present applicant to collect the other co-accused, and present applicant collected them. Thereafter, in one hotel they have conspired for eliminating both the deceased. It is further the case of the prosecution that during the investigation, it revealed that as per the conspiracy, the applicant went along with other co-accused to purchase the rope, polythene bag, iron wire etc. The dead body of the deceased was also recovered at the instance of the present applicant. Thus, the entire case is based on the circumstantial evidence.

9. The learned counsel for the applicant also invited my attention towards the recovery panchanama and inquest panchanama and pointed out the infirmities in the evidence of the prosecution. At the stage of bail, the evaluation of the evidence is not required, the only fact is to be seen whether the prima-facie case is made out against the present applicant. There is no dispute as to the fact that it was the co-accused Kiran Mahale who purchased the said house, where the deceased were residing. As per the prosecution case, he has hatched the conspiracy and his initiation, the present applicant and all the co-accused were the members of the said conspiracy. As per the conspiracy is concerned, no direct evidence is available and the said Kiran Mahale is already released on bail.

10. Though the material in the charge-sheet indicates the participation of the applicant in the conspiracy. However, the applicant is behind the bar since the date of his arrest i.e. 10/11/2016, and only two witnesses are examined till today, though charged is framed on 03/03/2018. Ultimately, the speedy trial is the right of the accused. The incarceration of the under trial prisoners for an indefinite period would be against the liberty granted to them under Article 21 of the Constitution of India. Ultimately, the speedy trial which is the right of the accused is not followed in the present case and keeping behind bar the accused for an indefinite period is not the answer. The accused is not produced before the Court also time to time, and his production was not ensured. As the Constitutional Court, the duty cast upon this Court to ensure him, his liberty as speedy trial has been recognized as integral part of the Constitution of India under Article 21. Hence, I deem it fit an appropriate to release the present applicant on bail, on the ground that there is a delay in trial as well as on the ground of parity. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] In connection with Crime No. 275/2016 registered with Police Station Ajni, Tahsil and District Nagpur for the offence punishable under Sections 363, 302, 452, 201, 120-B of the Indian Penal Code, 1860, Sections 4 and 25 of the Indian Arms Act and Section 135 of the Maharashtra Police Act, 1951,

the applicant – **Mahesh s/o Motilal Balhariya**, shall be released on bail, on executing P.R. Bond of Rs. 50,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station twice in a month of 1st and 15th day of every month and the concerned Police Station Officer shall record his presence.
- d) The applicant shall also attend the proceedings of the trial Court on fixed date without seeking any exemption unless there are exceptional circumstances.
- e) The applicant shall also furnish his cellphone number(s) and address with the address proof along with the names of the two relatives and their address with the address proof.
- f) The applicant shall not leave the jurisdiction of Nagpur District without prior permission of the District Court, Nagpur.
- g) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]