



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

Criminal Application (APPA) No. 1049 of 2024
in
Criminal Appeal No. 487 of 2024

[Mohd. Samir S/o Mohd. Aslam Sheikh **vs.** State of Maharashtra,
through P.S.O., P.S., Chichgarh, Tah. Deori, Dist. Gondia]

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

Court's or Judge's orders

Mr. R. P. Durge with Mr. L. B. Khergade, Advocates for the applicant/
appellant
Mr. A. R. Chutke, APP for the State/respondent

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 10-09-2025.

Heard.

2. The applicant/appellant is seeking suspension of sentence. He carries a blame of killing his wife on 22-6-2021. The reason for the murder is strained relations. The theory of prosecution is based on circumstantial evidence. The trial Court has relied upon the call data record to take a view that the applicant and co-accused were near the spot of crime at the relevant time. The trial Court, on the basis of this record, came to the conclusion that the applicant and co-accused travelled together and reached the spot which is situated at Chichgarh Forest, Tahsil Deori, District Gondia. The applicant is resident of Butibori, Nagpur. The co-accused are residents of Bhandara and Umred. Thus, the accused persons, located at three different places, are said to have joined hands and the basis for coming to such conclusion is call data record.

3. The prosecution has also relied on CCTV footage showing applicant and co-accused entering Milan Bar situated at Kohmara Village at about 21.00 Hours on the date of

incident. This bar is located at about 60 Kms from the spot of incident. Crime has been committed at about 18.30 Hours. The presence of applicant and co-accused is thus captured in CCTV camera.

4. When enquired, learned counsel for the applicant submits that Bar owner has been not examined. The accused persons, who are said to be captured in CCTV camera, are not identified by any witness but were identified by the Investigating Officer. Accordingly, it is argued that there is no credible evidence on the point of identification.

5. Learned Additional Public Prosecutor submits that since the accused persons have conspired, one may not get evidence of conspiracy and will have to be established on the basis of attending circumstances.

6. We do not, however, *prima facie* find from the set of facts noted above any circumstance connecting the applicant and co-accused with the crime. It is nobody's case that applicant was seen with the deceased at the relevant time to put up a theory of last seen together. The entire basis of conviction is last call theory amongst the accused and the deceased. This theory, without there being evidence of applicant possessing mobile phone on that day, will loose significance. The evidence to establish that applicant, co-accused and the deceased were possessing the respective mobile phones is not credible. That being so, we find that there is arguable case.

7. The applicant is in jail since the date of his arrest i.e. since 19-7-2021. The sentence of one of the co-accused, namely, Praful has been suspended. Similar is the role of the applicant. Further, considering the pendency, the appeal is not likely to be heard in near future. The applicant, therefore, has

made out a case, resulting into following order.

ORDER

- (i) The application is allowed.
- (ii) The sentence of conviction passed by the learned Sessions Judge, Gondia in Sessions Case No. 130/2021, convicting the applicant under Sections 302 and 120-B read Section 34 of the Indian Penal Code stands suspended. The applicant - Mohd. Samir S/o Mohd. Aslam Sheikh shall be released on bail on his furnishing Personal Recognizance bond in the sum of Rs. 50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall not indulge into any illegal activities. The applicant shall attend the jurisdictional police station i.e. Chichgarh Police Station, Tahsil Deori, District Gondia on first Tuesday of every month between 11:00 am to 1:00 pm. The applicant shall appear before the Court as and when directed. The applicant shall monitor progress of appeal and shall appear before the Court on the date of final hearing of appeal.
- (iv) The learned A.P.P. or the Investigating Officer is at liberty to seek cancellation of bail, if any condition is breached or for any other sufficient reason.

(S. S. THOMBRE, J.)

(A. L. PANSARE, J.)