

IN THE COURT OF DISTRICT JUDGE-1 & ASJ, GONDIA.

SESSIONS TRIAL NO. 71/2020.

(CNR: MHGO01000726-2020)

STATE OF MAH.-Vs- ANKIT & OTHERS.

ORDER BELOW EXH. 03.

(Passed on this 30th day of November, 2020)

1] The application at Exh. 03 is preferred by applicant/accused No.4 Gajendra s/o Zanaklal Marbate, in crime No. 399/2019, for grant of regular bail for the offences punishable under sections 302, 201, 364(A) and 120-B of the Indian Penal Code, registered with Ramnagar Police Station.

2. The prosecution case in brief is that, all the accused along with applicant/accused No.4 conspired to abduct deceased Saurabh Katare aged 20 years from MIET College Kudwa for ransom of Rs. 30,00,000/-. All the accused killed Saurabh Katatre and threw his body in Bagh Nadi Mundipar. After revelation of conspiracy all the accused were arrested and further investigation was done by the I.O.

3] It is contended by the applicant/accused No.4 that he is not involved in the conspiracy. He was friend of accused No. 1 Ankit. Hence, he cannot be made liable for the acts of other accused. Hence application be allowed.

4] The learned APP opposed the application on the ground of circumstantial evidence and involvement of accused No.1 in the crime.

5] Heard learned advocate for the applicant/accused No.4 and learned APP.

6] The learned advocate for the applicant/accused No.4 submitted that the case is based on circumstantial evidence, hence, this is a fit case for grant of bail. For that he relied on the judgment of Hon'ble Supreme Court **Balkrishna Tukaram Angre -Vrs- The State of Maharashtra** in Criminal Appeal No.1704 of 2017 decided on 22/09/2017. He also submitted that a confession of co-accused cannot be relied upon, as it is not admissible in evidence. For that he relied on the judgment of Hon'ble Allahabad High Court **Ahtesham Ahmad Zaidi -Vrs- State of U.P.** decided on 11/11/2019. He also submitted that there is no eye witness and CDR cannot be relied upon, hence, application be allowed.

7] On the other hand, the learned APP vehemently stated that all the accused including present applicant/accused No.4 committed the alleged crime. He took me through the statement of witnesses and identification of objects/articles.

8] Perused the charge-sheet, citations and material on record.

9] From the statement under section 164 of Cr.P.C., of Anil Pardhi, it is evident that he had seen applicant/accused No.4 with other accused in the car during night of 15/12/2019 which is the relevant time of the crime.

The circumstances under which he had seen all the accused were suspicious and were pointing something fishy. After arrest of applicant/accused No.4 a sleeper of deceased was recovered at the instance of accused No.4. At the instance of applicant/accused No.4 also a key of motorcycle of the deceased was seized. The seizure can be considered as discovery under section 27 of the Indian Evidence Act. This discovery cannot be termed merely as confessional statement of the accused for which the learned advocate for the applicant/accused No.4 had relied on citation of **Ahtesham Ahmad Zaidi**. In **Ahtesham Ahmad Zaidi's** case the Hon'ble Allahabad High Court has discussed the judgments of the Hon'ble Supreme Court on the topic of confessional statement of co-accused. But the facts of the present case are different. There are also CDR records which points out the role of present applicant/accused No.4. Hence, in the facts and circumstances of the case, grant of regular bail to the applicant/accused No.4 cannot be justified. Hence, I proceed to pass the following order.:-

ORDER.

1] The regular bail application (Exh.03) is hereby rejected.

Gondia.
Dated:- 30/11/2020.

(S. B. Parate)
District Judge-1 & ASJ, **Gondia**.