

Order below Exh.3 in Sessions Case No. 48/2018.

- 1) Applicant Sanjay Karbhari Baviskar is seeking discharge u/s. 227 of the Code of Criminal Procedure in C.R. No.26/2018 registered with Police Station, Niphad under Sections 302, 201 and 120-B of IPC.
- 2) I have heard learned counsel for applicant and ld. APP as well as the ld. counsel for complainant. Perused the say and charge-sheet.
- 3) From perusal of the charge-sheet, it appears that, this applicant is charge-sheeted along with co-accused with allegations that he hatched conspiracy with co-accused to commit murder of deceased Champalal on the ground that accused No. 5 who is wife of deceased had illicit relations with accused No.1 - Ramesh Sonawane and the deceased came to know this fact, due to which he used to create hurdle and beat his wife. Allegations against this applicant are such that, he received Rs.15,000/- to commit murder of deceased.
- 4) It is the contention of applicant that there is no evidence against him in this crime. The FIR was lodged against unknown persons and even after completion of investigation, the police machinery failed to attribute role played by him, in this crime. It is further contention of applicant that statement given by co-accused cannot be used against the applicant. It is further contended that from CCTV footage also, only accused No.1 - Ramesh Sonawane and accused No.2 - Akash Gangurde appeared while purchasing petrol from petrol pump, Ojhar. No incriminating material has been seized from his possession or at his instance. Hence, he prayed for discharge u/s. 227 of Cr.P.C. from alleged offences.
- 5) The prosecution as well as ld. counsel for complainant has opposed the application on the ground that the main accused person with the help of present applicant and other co-accused, had taken the

deceased to the crime spot under the pretext and committed murder and with an intention to disappear the evidence of the crime, they threw dead body and set the dead body on fire with petrol. The accused No. 1 and 2 are seen in CCTV footage of the petrol pump from where they obtained the petrol. The ld. counsel for complainant has submitted that since long there were talks taken place in between this applicant and co-accused and the said fact is also revealed from the call details report. As such there is ample evidence against all the accused persons including this applicant that they have hatched conspiracy to commit the murder of deceased in this crime.

6) From perusal of the charge-sheet, it appears that the investigating machinery came to the conclusion that this applicant and co-accused Akash Gangurde had received Rs.15,000/- to commit murder of deceased. However, it appears that police machinery came to the conclusion regarding involvement of this applicant on the basis of CDR of the mobile phone of this applicant through which, it reveals that the co-accused had made telephonic call to this applicant in the night of incident. From perusal of the photographs and postmortem report, it reveals that deceased was brutally murdered. However, it is contended by the applicant that he did not receive said call and therefore, the question of his reaching to the spot of incident after receiving the call does not arise. Except the CDR, there is no direct evidence against this applicant, showing his involvement in this crime.

7) From perusal of the say and statements of witnesses recorded by police machinery, it appears that Accused No. 1 and 2 appears to have obtaining petrol from petrol pump to set dead body on fire. Accused No.1 appears to have disappeared his blood stained clothes and he had also discovered chopper used while committing murder of deceased. Co-accused Akash Gangurde also discovered his blood stained clothes and cash of Rs.3,200/-. It further appears that though, it is

alleged by investigating machinery that present applicant has received Rs.15,000/- to commit murder of deceased but co-accused Akash nowhere stated in his statement recorded u/s. 27 of Evidence Act that present applicant was accompanied with him. From the statement of witness Kasim Rafik Shaikh, it also reveals that co-accused No.2 Akash Gangurde himself had purchased the chopper from his shop but he has not stated that present applicant was accompanied with accused No. 2 - Akash Gangurde while purchasing the chopper. Statements of other witnesses reveal that they have not seen the present applicant in company of the co-accused and deceased, at the time of incident. As such, it apparent that there is no sufficient evidence against the applicant to show his involvement in this crime. From perusal of the CDR reports, it further appears that though there was a call to applicant by co-accused but he has not received the said call on the date of incident. So also, no cash amount of Rs.15,000/- or part thereof has been seized from the possession of this applicant. From perusal of the panchanama prepared at petrol pump, Ojhar, it further appears that accused No.1 Ramesh Sonawane and accused No. 2 - Akash Gangurde had come to petrol pump and only, both accused are appearing in the CCTV footage stored in pen-drive seized by police.

8) Thus, the sum and substance of the overall discussion is that, there is nothing incriminating against this applicant to connect this applicant with the present hatchery of conspiracy along with co-accused. Thus, from perusal of the charge-sheet and statements of witnesses, it does not appear that this applicant hatched conspiracy along with co-accused to murder the deceased. From perusal of the charge-sheet, it appears that there is incriminating material only against other co-accused but not against this applicant. Thus, there is no incriminating circumstances against this applicant to frame the charge for the alleged offence. Hence, I deem it fit to pass following order.

Order

1/- Application Exh.3 is allowed.

2/- Applicant/accused No. 4 - Sanjay Karbhari Baviskar stands discharged of the offences punishable u/s. 302, 201 and 120-B of IPC vide Section 227 of the Code of Criminal Procedure.

3/- Applicant Sanjay Karbhari Baviskar is in jail custody, he be released forthwith by issuing release warrant subject to condition that the applicant shall submit bail bonds u/s. 437-A of Cr.P.C. with undertaking that he shall appear before the Appellate Court as well as before this Court upon receipt of summons in case any incriminating material is found against him during the course of trial or upon receipt of any summons or notice issued by Higher Court.

4/- Bail bonds shall be of Rs.25,000/- with solvent surety in the like amount. The applicant shall also provide his permanent address and shall not leave India till conclusion of trial, without prior permission of trial Court.

19.01.2019.

(R.G.Waghmare),
Additional Sessions Judge,
Niphad.