

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Criminal Application (BA) No. 323 of 2015

(Sheikh Arif s/o Sheikh Ahmad Vs. The State of Mah. through P.S.O.,
Ramdaspath, Akola)

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

Court's or Judge's order

Shri Anil. S. Mardikar, Senior Advocate with Shri S. G.
Joshi, Advocate for the applicant
Mrs. Rashi Deshpande, APP for the State

CORAM : P. B. VARALE, J.

DATE : 28-7-2015.

Heard learned Senior Counsel Shri Mardikar for the applicant and learned Additional Public Prosecutor Mrs. Deshpande assisted by learned counsel Shri R. J. Mirza for the State.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No. 92/2014 registered at Police Station, Ramdaspath, Akola for the offences punishable under Sections 143, 147, 148, 149, 307, 302, 504 and 109 of the Indian Penal Code, Sections 4 and 25 of the Indian Arms Act and Section 135 of the Bombay Police Act.

Learned Senior Counsel Shri Mardikar in his detailed submission invited my attention to the report lodged at the instance of Shaikh Salim who claims to be an eye witness to the incident and also one of the injured along with his brother Shaikh Akram who was subjected to assault by the accused and ultimately lost his life. Shri Mardikar, learned Senior Counsel invited my attention to the various

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statements recorded by the investigating agency, panchanamas drawn for recovery of the weapon, clothes etc., the injury certificate and the post mortem report. Shri Mardikar submitted that as per the report of Shaikh Salim, the present applicant and one Shaikh Rashid i.e. father in law of the present applicant played equal role in the assault over Shaikh Akram. As per report, Shaikh Rashid was allegedly carrying a knife and the applicant was carrying sharp edged weapon. Shri Mardikar submitted that it is alleged that one Mabba Pahelwan intervened in the assault and was subjected to assault. Shri Mardikar then submitted that this court had an occasion to consider the application of similar circumstanced accused persons and Shaikh Faim was one of them. He submitted that taking the stock of the material, this Court found that there is material variance in the version of so called eye witnesses. He submits that though it is the case of the prosecution and investigating agency that there were more than one injured person in the assault, at the same time, the version of these injured persons also varied. He submits that considering the nature of this material and major variance in the statements of so called witnesses and panchanamas carried out by the investigating agency in hurriedly manner showing slipshod investigation makes the whole story of the prosecution unbelievable and far-fetched and exaggerated versions. Thus, on merits and on ground of parity, the applicant is entitled for his

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enlargement on bail.

Learned Additional Public Prosecutor opposes the application.

I have gone through the material placed on record and the order passed by this Court in the Criminal Application (BA) Nos. 766/2014 and 16/2015. Learned Senior Counsel is justified in submitting that there is variance in the statements of the so called injured witnesses. Learned Senior Counsel is justified in submitting that on merits of the application as well as on the ground of parity, the applicant is entitled for bail. Learned Senior Counsel further submitted that on considering the material, this Court as well as the learned Sessions Judge, Akola enlarged the other accused persons on bail. In the result, the application is allowed.

The applicant be released on bail on furnishing P.R. bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount, on the following conditions.

a] The applicant to stay at Amravati and provide his address, cell numbers as well as details of two relatives viz. one from Akola and another from Amravati to the Investigating Officer.

b] The applicant to cooperate with the investigating agency and attend Police Station in which jurisdiction the applicant reside on 2nd and 4th Sunday of every month between 9.00 a.m. and 12.00 noon and to maintain diary of his attendance duly

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countersigned by the Police Station Officer of the concerned Police Station.

c] The applicant shall not tamper with the prosecution evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.

d] In case the applicant is moving out of the area of Police Station concerned in Armavati, he shall inform the concerned Police Station about his visit to other place.

In case of breach of these conditions, the prosecution agency to take necessary steps in accordance with the provisions of law.

JUDGE

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