

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPLICATION (BA) NO.558/2015**

(Sk. Bashir Sk. Wajir.vs.State of Maharashtra, through PSO P.S.Nandanvan, Nagpur)

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

Court's or Judge's orders.

Mr. A. A. Naik, Advocate for applicant.

Mr. A. K. Bangadkar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATE : SEPTEMBER 2, 2015.

Heard Mr.Naik, learned counsel for the applicant and Mr. Bangadkar, learned A.P.P. for the State.

The applicant is seeking his release on bail since he is arrested in Crime No.240/2014 registered with Police Station, Nandanvan for an offence punishable under Sections 302, 307, 143, 147, 148, 149 of the IPC read with Section 4, 25 of the Arms Act and Section 135 of the Bombay Police Act.

At the outset, learned counsel for the applicant has pointed out that this is the second application filed on behalf of the applicant. He has pointed out the order passed in Criminal Application No.219/2015, which clearly shows that this Court has granted liberty to the applicant for withdrawal of the said application in order to file fresh bail application before the trial Court and the learned trial Court was directed to consider the bail application afresh. In that view of the matter, the application was withdrawn.

After having granted the said liberty, the applicant again approached to the learned trial Judge. However, his application was rejected and, therefore, the applicant is before this Court.

The FIR is lodged by one Shaikh Akil Shaikh Khalil who is one of the injured and brother of deceased Shaikh Jalil Shaikh Khalil. In the charge-sheet, though there are statements of various persons, however, consideration can be zeroed down on the statements of Khairunnisa and Nisharunnisa recorded under Section 161 of the Code of Criminal Procedure by the investigation officer during the course of investigation. According to the FIR, on 21.06.2014, when the first informant and the deceased were chit-chatting on road at Hasanbaugh, that time accused persons, including the present applicant, assaulted them by means of various weapons in their hands. Name of the present applicant is taken along with co-accused Rajju, Munnu, Mujaffar, Nasir and Anni. The statement of eye witnesses who are named hereinabove also shows that these persons assaulted on the first informant and the deceased. It is to be noted that no specific role is attributed to the present applicants. Rather, according to the first informant and the eye witnesses, he has participated in the the assault along with other accused persons and the role attributed to the co-accused is

identical to the role attributed to the present applicant.

This Court has released the co-accused Munavar on bail whereas co-accused Nasir and Anni are released on bail by the trial Court. The role of these three persons is identical to the role played by the present applicant as per the prosecution case. Thus, in my view, the applicant is entitled to the benefit of principal of parity.

Further, there is no question of any recovery of any weapon at the hands of the present applicant since it is the case of the prosecution that the weapons were seized from the spot itself. Further, no other incriminating article and/or material is discovered when the applicant was in police custody remand of the investigating officer.

Looking to the aforesaid, the learned A.P.P. submitted that the applicant can be put to the stringent conditions. The learned A.P.P. is right in making such a prayer since it will take care of the apprehension of the prosecution. That leads me to make the following order.

ORDER

- (i) Criminal Application (BA) No.558/2015 is allowed.
- (ii) The applicant-Shaikh Bashir Shaikh Wajir shall be released on bail in Crime No.240/2014 registered with Police Station, Nandanvan for an offence punishable under Sections 302, 307, 143,

147, 148, 149 of the IPC read with Section 4, 25 of the Arms Act and Section 135 of the Bombay Police Act on he executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) Bail before the trial Court.

(iv) The applicant-Sheikh Bashir Sheikh Wajir shall attend Police Station, Nandanvan, Nagpur once in a fortnight on Sunday till the charge is framed. After framing of the charge, the applicant shall abide by the conditions that may be imposed upon him by the Court, who will be seisin of the matter. On day of attendance, the applicant shall be with the Investigating Officer from 2.00 p.m. to 5.00 p.m.

(v) The applicant shall not extend any sort of threat to the injured or the eye witnesses.

JUDGE