

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

CRIMINAL APPLICATION (BA) NO.684 OF 2015

Rafique Nisar Sheikh S/o Nisar Sheikh and anr

..VS..

State of Mah., thr PSO, Tumsar, District Bhandara

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

Court's or Judge's Order

Shri K.S. Motwani, Counsel for the Applicants.

Shri A.D. Sonak, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 27, 2015.

Heard.

By the present application under Section 439 of the Code of Criminal Procedure, the applicants are seeking their release on bail since the applicants are languishing in jail in connection with Crime No.45 of 2015 registered with Police Station Tumsar, District Bhandara for the offences punishable under Sections 307, 395, 397, 401, and 34 of the Indian Penal Code.

The investigation is over and the charge sheet is already filed.

The FIR is lodged by Satish Chandan Dahat who himself is an injured and victim. The FIR is recorded on 28.4.2015 in respect of occurrence dated 27.4.2015 that

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occurred on 22:14 hours on the said day. The FIR as well as the supplementary statement which were recorded by the investigating officer specifically attribute a role of snatching of the amount from the pocket of the first informant to co-accused Babu Banerjee and also the specific role is attributed by the first informant against said co-accused Babu Banerjee that he has given iron rod blow on his head. The role attributed against the present applicants in the FIR is that they have also given iron rod blow on his hands. That is the statement in the FIR. However, in the statement recorded on 1.5.2015, the first informant has ascribed the role against Anand Rangari that he has given fist blows and not the iron rod blows.

The role attributed to Rafique applicant No.1 in the FIR as well as in the supplementary statement that he has given iron rod blows which is not a vital part of the body and, therefore, *prima facie* he cannot be held guilty for the offence punishable under Section 307 of the Indian Penal Code.

Insofar as other injured Abhishek is concerned, the statement is completely silent about the names of the assailants. Further, there is no test identification parade in the prosecution case.

Looking to the aforesaid nature of the evidence collected against the present applicants, in my view, the

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applicants have made out a case in their favour. Hence, the following order :

ORDER

1] The criminal application is allowed.

2] Applicants – Rafique Nisar Sheikh S/o Nisar Sheikh and Anand S/o Walmik Rangari be released on bail in connection with Crime No.45 of 2015 registered with Police Station Tumsar, District Bhandara for the offences punishable under Sections 307, 395, 397, 401, and 34 of the Indian Penal Code on their executing Personal Bond of Rs.20,000/- (Rupees Twenty Thousand Only) each with one solvent surety each in the like amount.

3] The applicants shall attend the concerned police station once in a fortnight and preferably on first and third Sunday of each month till the charge is framed in between 3:00 pm and 5:00 pm.

4] The applicants are prohibited from extending any threat whatsoever in the nature

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to the prosecution witnesses.

With these directions and observations, the criminal application is allowed and disposed of.

JUDGE

!! BRW !!

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