

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

CRIMINAL APPLICATION NO.90/2015

(Mohammad Afzal Khan s/o Sujawarkhan.vs.Sheikh Rizwan s/o Sheikh Rafeek & anr.)

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

Court's or Judge's orders.

Mr. S. P. Hedao, Advocate for applicant.
Ms Neeta Mehta, A.P.P. for non applicant-State.

CORAM : A. B. CHAUDHARI, J.

DATE : DECEMBER 1, 2015.

Heard.

This is an application for cancellation of bail. Learned counsel for the applicant submits that the impugned order granting bail to non applicant no.1 is contrary to record.

I have perused the statement of Mohd. Afzal Khan Sujawar Khan dated 22.05.2015, from which it is clear that the applicant does not have any role of overt act but it is Nishad, who had committed the assault. I have also perused the reasons recorded in paragraph 4 of the order passed by learned Additional Sessions Judge, Wardha, which reads thus:

“4. According to prosecution, role of applicant/accused Sk. Rizwan is that he gave the knife to the accused Nishad. As against this, learned counsel for applicant from FIR and statement of some of the witnesses pointed out

that story of prosecution in respect of handling over knife by applicant accused is prima-facie not supported by the witnesses and the FIR. It is not the case of prosecution that applicant accused stabbed Imran or Afsarkhan. Applicant accused is aged about 23 years and not having any criminal antecedents. Earlier bail application filed by the applicant was rejected, prior to filing of charge-sheet. Now investigation is over. Role played by present applicant/accused is limited and similar to that of accused Sheikh Ismail, who has already released on bail. Therefore, applicant is entitled for bail on the ground of parity. Apprehension of prosecution can be safeguarded by imposing conditions.”

I do not find that the discretion exercised by the trial Court while releasing the non applicant no.1 on bail can be said to be perverse.

In view of above, Criminal Application No.90/2015 is rejected.

JUDGE