

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

CRIMINAL APPLICATION (BA) NO.1087/2017

Mirza Mohd. Nazim s/o Imteyaz Ahmed .vs.. State of Maharashtra through
PSO P.S. Ghuggus, Dist. Chandrapur.

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

Court's or Judge's orders.

Mr. Mir Nagman Ali, Advocate for applicant.
Mrs. K. Deshpande, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 22, 2017

1. Heard Mr. Ali, Advocate for applicant and Mrs. Deshpande, A.P.P. for non applicant-State.

2. This is an application under Section 439 of the Code of Criminal Procedure for grant of bail. The applicant is arrested on 10.07.2017 in connection with Crime No. 409/2017, registered with Police Station, Ghuggus, Dist. Chandrapur for an offence punishable under Sections 307, 34 of the Indian Penal Code and Section 3 and 25 of the Arms Act for grant of bail.

The investigation is over. The investigating officer has also filed challan before the Court of law.

3. Initially, an application for bail was filed by the present applicant before this Court. The said application was registered as Criminal Application No.790/2017. When the said application was filed before this Court, that time investigation was in progress and charge-sheet was not filed.

4. The said application was withdrawn by the applicant with a liberty to approach before the Court below after filing of the charge-sheet.

5. After disposal of aforesaid criminal application by this Court, the investigating officer has filed the charge-sheet in the Court of law. Thereafter, the applicant has filed an application for bail before the learned trial Court. The said was rejected. Consequently, the applicant is before this Court with a prayer that he be released on bail.

6. According to the learned counsel for the applicant, the applicant has not participated in the actual assault. He submitted that even as per the prosecution case, the applicant was standing near a floor mill and when the accused nos. 1 and 2 started running away from the spot, he also joined them. This is the only circumstance and/or material that has been collected by the investigating officer against the present applicant.

7. The reply filed on record after filing of the charge-sheet shows that the applicant was not present inside the house of the injured at the time when the accused nos. 1 and 2 opened fire towards him. Even from the said reply, it is clear that he started running away along with those two accused persons from the point of floor mill.

8. According to the prosecution, there was a love affair in between the sister of the complainant Rakesh and accused no.1-Kalva, which was objected by the complainant and that is the motive attributed in the present crime for commission of the offence.

9. Even as per the material that is collected during the course of the investigation, the accused no.1-Kalva and accused no.2-Ballu, barged inside the house of the complainant. According to the witnesses whose statements are recorded under Section 161 of the Code of Criminal Procedure during the course of investigation, they in chorus state that Ballu was holding gun which was snatched away by Kalva and he opened fire. Even according to the FIR, the bullet was fired on the left thigh of the complainant. Apart from that, it is crystal clear from the entire prosecution case that the present applicant was not present inside the house when the incident had taken place.

10. Insofar as the incident of running away of the applicant along with accused no.1-Kalva and accused no.2-Ballu is concerned, in my view the said is not sufficient to curtail the personal liberty of the present applicant inasmuch as there is no material in the entire charge-sheet that the applicant came along with Ballu and Kalva. Thereafter, the present applicant remained near the floor mill and Ballu and Kalva barged inside the house.

11. In absence of anything that right from the beginning the applicant was accompanying with these two accused persons when the prosecution case itself shows that after the incident was over the accused nos. 1 and 2 started running away and they were chased. At that time, if the applicant, who may be casually standing near the floor mill, fled away from the spot, in my view, at least prima facie it cannot be held that the applicant was also sharing any intention with Kalva and Ballu.

12. With this type of evidence, in my view, the personal liberty of the present applicant cannot be curtailed further only because the applicant is having tainted past record. It is not the case of the prosecution that in any of the crimes which were registered against the applicant, the applicant has flouted the condition of bail on which he is released on bail. Consequently, the applicant has made out a case for getting himself released on bail. Hence, following order is passed.

ORDER

- (i) Criminal Application No.1087/2017 is allowed.
- (ii) Applicant Mirza Mohd. Nazim s/o Imteyaz Ahmad be released on bail in connection with Crime No. 409/2017, registered with Police Station, Ghuggus, Dist. Chandrapur for an offence punishable under Sections 307, 34 of the Indian Penal Code and Section 3 and 25 of the

Arms Act, on he executing P.R. Bond in the sum of Rs.25,000/- with two solvent sureties in the like amount.

(iii) The applicant shall attend Police Station, Ghuggus twice in a month i.e. on first and third Monday of every month and shall remain in the Police Station between 04.00 p.m. to 06.00 p.m.

(iv) The applicant shall not extend any types of threats to any of the prosecution witnesses.

(v) If the investigating officer notices that the applicant has committed breach of any of the conditions mentioned hereinabove, the investigating officer is free to move an application for cancellation of bail.

The application stands disposed of.

JUDGE