

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

CRIMINAL APPLICATION (BA) NO.717/2019

Juber Sheikh s/o Naseem Sheikh .vs. State of Maharashtra, through PSO
P.S. Pachpaoli, Nagpur.

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

Court's or Judge's orders.

Mr. R. K. Tiwari, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant.

CORAM : V. M. DESHPANDE, J.
DATED : SEPTEMBER 5, 2019

Heard Mr. Tiwari, learned counsel for applicant
and Mr. Khan, learned A.P.P. for the State.

This is an application for regular bail under
Section 439 of the Code of Criminal Procedure since the
applicant is arrested in connection with Crime No.185/2018,
registered with Police Station, Pachpaoli, Nagpur for an
offence punishable under Sections 302, 143, 147, 149 and
120-B of the Indian Penal Code.

Investigation is over. Charge-sheet is also filed.
Charge-sheet is filed against in all seven accused persons
including the present applicant. Other six accused persons
are already released on bail by the trial Court.

Deceased in this prosecution case is one Arman
Ansari. Report is lodged by his mother Smt. Shakila Ansari
on 26.08.2018. She is not eye witness. Her report would
show that there used to be dispute in respect of parking car
by deceased Arman in front of the house of the sister of the

present applicant, resulting into lodging of counter FIRs against each other. According to the FIR, on 26.08.2018, at about 02:00 a.m., she received a phone call wherein she got an information that her son Arman was assaulted at Teka Naka, New Basti and he is admitted in the hospital.

Learned A.P.P. invited my attention to statements of Shahejad Shaikh Hafiz Shaikh and Shaikh Sajid Shaikh Shabbir. They are eye witnesses, as per the charge-sheet. Their statements would reveal that the deceased Arman was possessing two motor vehicles. One old Indigo and another is Maruti Suzuki Swift and he was engaged in the business of selling old cars. Their statements would show that the present applicant runs a Biryani Shop at Patankar Chowk. Their statements would further show that in front of house of Arman, there is house of sister of applicant-Juber, which is always in locked condition. Therefore, Arman used to park his Indigo car in front of the said house. According to these two eye witnesses, that was the reason for the dispute. According to their statements, on the date of the incident, at 01:00 a.m. the deceased was assaulted by present applicant along with co-accused by means of deadly weapons such as baseball stick, iron rods, in their hands.

Post mortem report shows that there are 10 injuries on the deceased and cause of death is head injury.

Clothes of applicant are seized during the course of investigation on 27.08.2018 itself at the time of his arrest. The seizure panchanama would show that clothes were not stained with blood. Further, baseball stick, which is seized

at the behest of applicant is also not having blood stains.

From the statements of these two eye witnesses, it is clear that the applicant was not the only assailant but the other co-accused persons were also assailants with respective weapons in their hands. Those persons are already released on bail. In my view, case of the present applicant is on the same footing as that of co-accused who are released on bail.

Further, reading of charge-sheet would reveal that the incident has occurred on the issue of parking of vehicle. Therefore, during the course of trial, it is quite possible that the offence may be scaled down to the offence of lesser punishment.

Since the investigation is over and charge-sheet is already filed, in my view, further custodial presence of the applicant is not necessary. Hence, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Juber Sheikh s/o Naseem Sheikh, be released on bail in connection with Crime No.185/2018, registered with Police Station, Pachpaoli, Nagpur for an offence punishable under Sections 302, 143, 147, 149 and 120-B of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/-with one solvent surety in the like amount.
- (iii) Applicant shall attend Police Station, Pachpaoli, Nagpur once in a week i.e. on every Sunday between 02:00 p.m. to 05:00 p.m., till culmination of the trial.

(v) Observations made in this order are purely prima facie in nature and those are made for consideration of this application. Learned trial Judge shall not get influenced by these observations at the time of trial.

The application is disposed of.

JUDGE

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