

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

CRIMINAL APPLICATION (BA) NO.725/2019

Kadir Sheikh s/o Jamaluddin Sheikh 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. C.R. Thakur, Advocate for applicant.

Mr. N.R. Jawade, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : SEPTEMBER 19, 2019

Heard Mr. Thakur, learned counsel for applicant
and Mr. Jawade, learned Additional Public Prosecutor for
non applicant-State. Also perused the reply filed on behalf of
the State.

Applicant is arrested on 04.04.2016 in connection
with Crime No.223/2016 registered with Police Station,
Ghuggus, Dist. Chandrapur for an offence punishable under
Sections 302, 201, 212, 107, 109, 120(B) read with Section
34 of the Indian Penal Code and Section 4/25 of the Arms
Act and Section 135 of the Maharashtra Police Act and
Section 3 (1) (I), 3(2), 3(3) of Maharashtra Control of
Organised Crime Act.

Learned counsel for applicant submits that
though first informant-Sujitkumar Ghosh is an eye witness,
he has not identified the applicant during test identification
parade. He submits that though the applicant is arrested on

04.04.2016, as on date the charge is not framed and in absence of any direct evidence against the present applicant, it is the submission that the applicant be released on bail.

Per contra learned Additional Public Prosecutor for the State submits that at the behest of applicant the weapon used in the crime is discovered and consequently recovered. He submitted that present applicant had a meeting with co-accused Sheikh Sarvar who runs a syndicate, in District Prison, Chandrapur where conspiracy to eliminate the deceased Arif Khan was hatched. It is the submission of learned Additional Public Prosecutor that the vehicle i.e. motorcycle which was used in the crime, stands in the name of father of applicant. He, therefore, submits that the application be rejected.

The first information report is lodged by one Sujitkumar Ghosh, a Senior Overman of Western Coalfields Limited, Ghuggus Open Cast Mine. The gist of the first information report is that when he was undertaking the work, that time deceased Arif Khan was 10 feet away from him. At that time, on a motorcycle three persons came whose faces were masked and suddenly assaulted on Arif Khan, resulting into his death. From the report as well as the statement of the first informant recorded on next day of first information report, it is clear that though in his presence deceased was assaulted by

three unknown persons, he could not see their faces since those were masked. According to the statement dated 04.04.2016 complainant claimed that if assailants are brought to his notice he will identify them.

During the course of investigation, various accused persons were arrested. Charge-sheet was filed against thirteen persons. It is to be observed here that the applicant was put for identification parade and in the said identification parade, neither the first informant nor any of the prosecution witnesses could identify him, fixing his presence at the time of incident.

Though it is the claim of prosecution that present applicant has hatched conspiracy with the syndicate leader by having a meeting in District Prison, Chandrapur, the said gang leader-Sheikh Sarvar is already released on bail by the learned trial Court and at no point of time, any attempts were made by the prosecution for cancellation of his bail.

Insofar as recovery at the behest of applicant is concerned the recovery memo would show that the weapon is seized from open space i.e. from Irai river. Therefore, at this stage, much importance cannot be attached to the said recovery.

Though co-accused Shahrukh Khan whose bail application is rejected by this Court, has made a confessional statement to implicate the present applicant, the said statement was retracted by him and its evidentiary value

will be considered at the time of trial. Be as it may, this Court has also released Anees Sheikh (Coram:Nitin W.Sambare, J.) in Criminal Application (BA) No.754/2018, who was also not identified by any of the witnesses during the identification parade.

Looking to the fact that none of the prosecution witnesses were able to identify the applicant as assailant or the person present at the time of assault, the trial is not proceeding further and when the applicant is in jail since 04.04.2016, in my view, the present bail application requires favourable consideration. Hence, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Kadir Sheikh s/o Jamaluddin Sheikh, be released on bail in connection with Crime No.223/2017, registered with Police Station, Ghuggus, Dist. Chandrapur for an offence punishable under Sections 302, 201, 212, 107, 109, 120(B) read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act and Section 3 (1) (I), 3(2), 3(3) of Maharashtra Control of Organised Crime Act, on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties of the like amount.

(iii) It is specifically directed that till culmination of the trial, applicant shall not enter territorial jurisdiction of Chandrapur district.

(iv) At the time of furnishing bail bonds, the applicant shall furnish his residential address so that the Court below, before whom bail bonds will be executed, will give necessary directions to the applicant to attend the police station nearest to his residence, once in a week, till culmination of the trial.

(v) If it is noticed that the applicant has breached the condition by entering into territorial jurisdiction of Chandrapur district and/or indulging in the activity of pressurizing the prosecution witnesses, it shall be open for the prosecution to file an application cancellation of bail.

The application is disposed of.

JUDGE

srwagh