

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

CRIMINAL APPLICATION [BA] NO. 282/2021.

Mohd. Salim Shah Sagir Shah

-VERSUS-

The State of Maharashtra

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

Court's or Judge's Orders

Shri M.N. Ali, Advocate for the Applicant.
Shri I.J. Damle, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 16, 2021.

Hearing was conducted through Video
Conferencing.

2. The applicant came to be arrested in connection with Crime No. 916/2020, registered with Ramnagar Police Station, Chandrapur for offence punishable under Sections 302, 452 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act. Besides other grounds, the applicant has claimed bail by contending that the police papers does not ascribe any role to the applicant except mere presence at the time of occurrence.

2

3. It is contended that though one of the eye witness namely Rajesh has stated that the applicant had caught hold the deceased at the time of occurrence, however, the same is inconsistent with the contents of the first information report, which was lodged on the date of occurrence. It is contended that the main allegation of assaulting the deceased by means of sword are against accused Sarfaroze only. Moreover, it is submitted that the investigation is completed and there is no necessity of detaining the applicant in jail for indefinite period.

4. The State has resisted bail by filing reply-affidavit. It is contended that the applicant was very much present at the time of occurrence. The applicant along with two others have entered into the house of the complainant which is sufficient to show that he has shared common intention with co-accused. It is stated that there are two eye witnesses to the incident, and it was a case of deadly assault by means of sword.

5. Brother of the deceased namely Kamlesh has lodged report regarding the occurrence. He stated that on 24.09.2020, in the afternoon the applicant

3

along with co-accused namely Sarforoz and Rizwan came to his house. There was hot exchange of words in which Sarfaroaz caught hold the collar of Rajesh [witness] to whom deceased Karan rescued. The informant further stated that then immediately co-accused Sarfaroaz took out a weapon looking like sword by which he assaulted on the chest of Karan, who later on succumbed to the injuries.

6. There is one other eye witness who is Rajesh. The police recorded his statement after four days i.e. on 28.09.2020 in which he added one more accused, and also stated that at the time of occurrence, applicant Salim caught hold hands of the deceased Karan.

7. True, there appears to be inconsistencies in the version of two eye witnesses limited to the extent of role of the applicant which is a matter of appreciation at the time of trial. However, that needs to be weighed on prima facie basis. One of the eye witness who has immediately lodged report to the police has not ascribed any role to the applicant, except his presence. No doubt if the applicant has shared common intention and participated in the

4

crime, he can be held vicariously liable for the offence, as if he alone has committed the same. But, the essential things are to be proved on a full fledged trial. Now the investigation is complete, and charge sheet has been filed. The assault is allegedly stated to be made by the co-assured Sarfaroze. At the most the allegation against the applicant is of accompanying the main accused and assisting the co-accused Sarfaroze while assaulting the deceased. Having regard to these aspects and considering the nature of material collected against the applicant, his further detention is no more required.

8. The learned A.P.P. has submitted that there are criminal antecedents against the co-accused Sarfaroze, who is real brother of the applicant Salim. However, there is no submission that the applicant is having antecedents, hence, the antecedents of his brother would not play any role while deciding the entitlement of the applicant for grant of bail. The trial will take considerable time for its disposal. In view of above, the applicant is entitled to be released on bail, by putting certain conditions. It is made clear that the above observations are restricted for the

5

purpose of dealing this Bail application, and the same shall not come in the way of the Trial Court while considering the case on merits. Hence, the following order.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant / accused – Mohd. Salim Shah Sagir Shah be released on bail in connection with Crime No. 916/2020, registered with Ramnagar Police Station, Chandrapur for offence punishable under Sections 302, 452 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused to attend the concerned police station on every alternate Monday in between 10 a.m. to 12 noon, till the conclusion of the trial.
- (iv) The applicant /accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

Order

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6

- (v) Pending applications if any, stands disposed of.

JUDGE

Rgd.