

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

CRIMINAL APPLICATION (BA) 530 OF 2021

(Mohammad Adil @ Shahrukh s/o. Abdul Gaffar..vs..State, thr PSO, PS Paratwada, Dist.
Amravati)

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

Court's or Judge's orders.

Mr. R.M. Daga, counsel for applicant.
Mrs. K.R. Deshpande, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE:15.09.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 386/2019, registered with Police Station, Paratwada, for offences punishable under sections 302, 143, 147, 148, 149, 201 of Indian Penal Code and section 135 of Maharashtra Police Act.

3. The crime is registered on the basis of report dated 30.9.2019, lodged by Mr. Shubham Nandlal Nandwanshi, who also claims to be an eye witness. The informant alleges that his maternal brother Mr. Shyam Kholapure, who is known as Shyama Pahalwan was habituated to gambling and between 11.00 a.m. to 11.15

a.m. on 30.9.2019, he went to the open space opposite the Timber Depot Cooperative Bank situated at Gurunanak Nagar, to play cards. Mohd. Sajid Hela, Javed, the applicant – Shahrukh, Mr. Parvez @ Paru, Mr. Anna and Mr. Harshid Khan had also come there to gamble. The informant had gone to meet his friend Mr. Vishal and while returning, he witnessed that the applicant Shahrukh was brandishing a knife, Sajid and Javed had sickles and all were assaulting Mr. Shyama Pahalwan. The informant feared for life and left the scene. The informant asked his friend Mr. Rahul to visit to the spot of the incident and he conveyed that Mr. Shyama Pahalwan is dead.

4. Apart from Mr. Shubham, the Investigating Agency has recorded the statements of at least four eye witnesses, whose version is consistent as regards the role played by the applicant. Every eye witness states that the applicant assaulted Mr. Shyama Pahalwan with knife. The post mortem report shows that as many as thirteen stab wounds, many on vital organs like neck and chest were noticed on the body. The statement of the applicant is

recorded under section 27 of the Indian Evidence Act. The applicant, while in custody, agreed to disclose the place where weapon of offence was hidden and pursuant to the statement, the knife is recovered from beneath the cot in the house of the applicant. The bloodstained clothes of the applicant were seized. Considering the material in the chargesheet, there is no escape from the conclusion, albeit prima facie conclusion, that there is a formidable case against the applicant connecting him to the brutal assault.

5. Mr. R.M. Daga would submit that this Court has granted bail to Rahmat Khan and Sajid Khan @ Hela. Perusal of the order granting bail to Rahmat Khan would reveal that what weighed with this Court was that the eye witnesses, other than the first informant, did not attribute any role to Rahmat Khan @ Hela in the actual assault and all that is attributed is instigation. Similarly, the order granting bail to Sajid @ Hela reveals that the eye witnesses, other than the informant Mr. Shubham did not attribute any role to Sajid @ Hela in the actual assault. The co-accused who are released on bail, are certainly not similarly situated

to the applicant against whom every eye witness consistently alleges direct assault with knife.

6. Considering the gravity of the accusation and the material on record, I am not inclined to exercise discretion in favour of the applicant.

7. It is finally submitted that liberty be reserved to apply afresh if the right of the applicant to speedy trial is infringed. It is made clear that if there is such delay, not attributable to the accused, as would infringe the right to speedy trial under Article 21 of the Constitution of India, no liberty as such is required, and it would always be open for the applicant to so urge, and such submission would be tested by the appropriate Court on its own merit. Subject to the aforesaid observations, the Application is rejected.

Judge