

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

CRIMINAL APPLICATION (BA) NO.646 OF 2021

(Shekhar s/o Lalaji Bhude Vs. State of Maharashtra thr. PSO PS Shantinagar, 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.K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 30th JULY, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant Shekhar Bhude is arraigned as accused in Crime 35/2021 registered with Police Station Shantinagar, Nagpur for offences punishable under Sections 143, 147, 148, 149, 302 and 323 of the Indian Penal Code and Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

3. In the incident which allegedly occurred on 07.02.2012, Mr. Vijay Waghdhare was done to death, and Mr. Yash Palandurkar suffered injuries.

4. The prosecution is treating the report lodged by Mr. Yash Palandurkar as the first information report.

Mr. Tiwari joined issues and submits that the information disclosed by Mr. Yash Palandurkar to the Police Constable on duty at the hospital where he sought treatment disclosed the commission of cognizable offence, and therefore, is the FIR.

5. At this stage, it would not be necessary to consider whether the statement of Yash Palandurkar is the FIR or is only a statement under Section 161 of the Criminal Procedure Code.

6. Be that as it may, since Yash Palandurkar is the injured, and his version has come on record in close proximity to the incident, the version merits deeper consideration as compared with the statement of Mr. Aniket which is recorded more than a month after the incident.

7. The role attributed to the applicant is that he confronted the deceased, and assaulted him with fist blows. Mr. Yash Palandurkar specifically states that in the midst of the assault, Mrs. Sangeeta Dere, who is the mother of Ritik Dere came and instigated the applicant and his friends to murder Vijay. According to Mr. Yash Palandurkar instigated thus, Akash ran and brought a knife and other accused then murderously assaulted Vijay, which assault proved fatal and some of them assaulted Mr. Yash Palandurkar.

8. Apart from the fact that in the statement dated

07.02.2021 the only role attributed to the applicant is the initial assault by fist and blows, if the statement is to be taken at face value, it would be arguable if Section 149 can be invoked, since according to Mr. Yash Palandurkar it was only after Mrs. Sangeet Dere arrived at the scene and instigated the accused that one of them fetched a knife.

9. Be that as it may, while ordinarily I would be loathe to make any observation on the probative value of the statement, in the present case, there are strong reasons for me to make a departure. The Investigating Officer has found that Mrs. Sangeet Dere, Mrs. Anikit Dere and Mr. Akash (who allegedly fetched the knife at the instigation of Mrs. Sangeet Dere) were not even in Nagpur at the relevant time, and therefore, the Investigating Officer did not arraign them as accused in the charge-sheet filed.

10. While Mr. Pathan, the learned APP would submit that since over implication is quite common, the worth of the statement must be left to the trial court to consider. While I agree with Mr. Pathan that the probative value of the statement and the evidence which may be adduced by Mr. Yash Palandurkar will have to be left to the trial court, for the purpose of bail, the fact that the very substratum of the version is found false by the Investigating Officer, impels me to hold that a case for bail is made out.

11. Before parting, I must record in fairness to

Mr. Pathan that the bail is also opposed on the ground that the applicant face a prosecution under Section 302 of the IPC and has propensity to indulge in criminal activities. In response, Mr. Tiwari states that the offence under Section 302 IPC was registered in 2010 and the applicant is acquitted and that there is no live prosecution pending.

12. In view of the circumstances which I have noted, I am not inclined to reject bail only on the ground that in the past the applicant has faced a serious accusation, particularly since he has been found not guilty by the competent court. Notably, the investigation is complete and the charge-sheet is filed.

13. The application is allowed.

14. The applicant be released from custody subject to the following conditions:

- (i) The applicant shall execute the personal bond of Rs.15,000/- with solvent surety of like amount.
- (ii) The applicant while on bail, shall not indulge in any criminal activity and if found involved in any offence the prosecution shall be entitled to seek cancellation of bail on that ground alone.
- (iii) The applicant shall not enter the territorial jurisdiction of the Shantinagar Police Station, Nagpur till the conclusion of the trial. Any breach of this condition shall *ipso facto* entitled the

prosecution to seek cancellation of bail.

- (iv) The applicant shall attend every date of hearing scrupulously.
- (v) The applicant shall not make any attempt to influence the witnesses, directly or indirectly.
- (vi) The applicant shall not leave the country without the permission of the jurisdictional Court.

15. The application is disposed of accordingly.

JUDGE

NSN