

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

CRIMINAL APPLICATION (BA) NO. 784 OF 2021

(Mohd. Sheikh Mohd. Arif Sabri ..vs.. State of Maharashtra, through PSO, PS Sadar, Nagpur)

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

Court's or Judge's orders

Mr. C.B. Barve, Counsel for the applicant,
Mr. N. Rao, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 31-08-2021

The applicant is one of the four accused arraigned in Crime 383/2018 registered with Sadar Police Station, Nagpur for offences punishable under Section 307 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. The incident occurred, according to the prosecution, at 1.30 in the night intervening 24-9-2018 and 25-9-2018. The accused alleged trespassed in the residential house of Rajesh Verma and assaulted him with iron rods after throwing chilly powder in his eyes.

3. The wife of the injured Mrs. Soni lodged report alleging that accused Raja Pathan and Shakil Pathan assaulted her husband with iron rods and made passing reference to two companions. The statement of the son, Abhishekh, which is recorded on 29-9-2018, does make a reference to two companions, however, no role in the assault is attributed to the companions. It is the injured,

whose statement is recorded on 28-9-2018, who states that other than Raja Pathan and Shakil Pathan, the applicant, who he refers to as Shahrukh, assaulted him with iron rod.

4. It is submitted that looking at the nature of the injuries, offence punishable under Section 307 of the Indian Penal Code is not made out inasmuch as the intent to cause death or the knowledge that death would ensue cannot be spelt out.

5. Considering the material on record, the applicant has made out a case for grant of bail.

6. The learned Additional Public Prosecutor Mr. N. Rao does point out that the applicant is facing an earlier prosecution under the Arms Act since he was found possessing a knife. Considering the material on record, I am not inclined to reject bail only on the ground that the applicant is facing an earlier prosecution under Sections 4/25 of the Arms Act. Stringent conditions, however, will have to be imposed.

7. The application is allowed, subject to the following conditions.

a) The applicant shall be released on bail on executing personal bond of Rs.25,000/- with a solvent surety of like amount.

b) The applicant shall report at the concerned police station on the 1st and 15th day of every month and shall obtain acknowledgment/confirmation of attendance in a diary separately maintained for that purpose. Any breach of this condition may *ipso facto* entail in cancellation of bail, if an appropriate motion is moved by the State.

c) While on bail, the applicant shall not indulge in any criminal activity and breach of this condition shall *ipso facto* entail in cancellation of bail, if an appropriate motion is moved by the State.

d) The applicant shall not make any attempt to contact muchless influence any witness and shall not enter the territorial limits of Sadar Police Station, Nagpur, save and except to mark the attendance or to attend the dates of hearing.

e) The applicant shall scrupulously attend every date of hearing and any default, unless condoned by the trial Court, shall entail in cancellation of bail.

f) The applicant shall not leave the country without the permission of the trial Court.

JUDGE

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