

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

CRIMINAL APPLICATION (BA) NO.874 OF 2021

(Javed Khan s/o Habib Khan Vs. The State of Maharashtra thr. PSO PS Mankapur,
Dist. Nagpur)

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

Court's or Judge's orders.

Mr. P. W. Mirza, Advocate for Applicant.
Mr. N. S. Rao, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.
DATE: 12th OCTOBER, 2021.

The applicant is arraigned as accused 2 in Crime 323/2020 registered with Police Station Mankapur, Nagpur for offences punishable under Sections 302, 120-B read with 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. Accused 1 Syed Asif Ali is the brother of Amin Ali. The brothers were at loggerheads over some property issues. Accused Asif Ali enlisted the help of accused 2 to 4 and launched a brutal assault on Amin Ali at 09:30 p.m. or thereabout on 10.08.2020. The prosecution case is that accused 1 Syed Asif Ali called upon/exhorted the co-accused to do away with Amin Ali. The applicant and accused 3 chased Amin Ali and delivered blows on the head with iron rod. Amin Ali collapsed due to the injury suffered. Accused 4 then took over and assaulted the fallen Amin Ali with knife.

3. The incident is captured in CCTV camera. The knife used by accused 4 Sadiq is recovered at the instance of the applicant whose statement under Section 27 of the Indian Evidence Act is that the knife was handed-over to him by Sadiq. At the time of the incident, Amin Ali was accompanied by witness Amir Ali. While Amir Ali does not name the applicant, presumably since he was not aware of his name, he has identified the applicant in the test identification parade.

4. The material in the charge-sheet against the applicant is formidable. Amin Ali is killed brutally. Initially he was chased by the applicant and the co-accused and assaulted on the head with iron rod, causing him to collapse and then was stabbed by knife by Sadiq Khan. Considering the brutality of the assault and the formidable material on record, I am not inclined to grant bail.

5. The submission of the learned counsel for the applicant that Amir Ali has not named the applicant in the police statement, is duly noted. The prosecution case is that the witness did not know the applicant by name, and it is precisely for this reason that the identification parade was conducted in which Amir Ali identified the applicant. The extension of the submission is that since witness Amir Ali was related to the deceased it is inconceivable that he did not know the applicant by name is also duly noted. No inference can be drawn, at the stage of deciding entitlement to bail, that Amir Ali would necessarily know

the names of everyone who is related to accused 1 through marriage. Notably, other than the statement of Amir Ali, there are other witnesses who implicate the applicant in the crime.

6. No case for grant of bail is made out.

7. The application is dismissed.

JUDGE