

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

CRIMINAL APPLICATION (BA) NO. 39 OF 2022

Sheikh Juber Sheikh Najir and another...Versus...State of Maharashtra and anr

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

Court's or Judge's orders

Mr. S.V.Sirpurkar, Advocate for the applicants
Ms. Mayuri Deshmukh, APP for respondent No.1/State
Mr. M.N.Ali, Advocate for respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/03/2022

1] Heard Mr. Sirpurkar, learned counsel for the applicants, Ms. Deshmukh, learned APP for respondent No.1/State assisted by Mr. Ali, learned counsel for Respondent No.2.

2] The applicants are arraigned for the offence under Sections 302, 307 r/w Section 34 of the IPC and Section 12 of the POCSO Act in Crime No. 728/2021. The incident is dated 31.08.2021 at 6.30 p.m. The arrest is on the same day. The charge-sheet is filed on 25.11.2021.

3] Mr. Sirpurkar, learned counsel for the applicants by inviting my attention to the report at page 33, the statement of Rasul Kha, the injured (page 142) and the statement of Mohammad Nishad Mohammad Shabbir (page

144), submits that the assault attributed to the applicant No. 2 Shekh Najir is by a stick on the leg of deceased Noor Kha, whereas the assault attributed to the applicant no. 1 Shekh Juber is by a stick upon the head of deceased Noor Kha. Assaults have also been attributed by an iron rod on the head of deceased Noor Kha by Shekh Juned and by Saddam by a knife on various parts of the body of Rasul Kha. Considering the PM report which attributes the demise of Noor Kha, to the assault on the head and the role of the present applicants, they are entitled to bail.

4] Learned APP opposes the application and submits that all the four accused had jointly assaulted the deceased Noor Kha as well as the injured Rasul Kha and therefore, the application needs to be rejected.

5] It has come on record that about 10-12 days earlier to the date of the incident, since the accused Saddam, used to taunt the daughter of Rasul Kha, he was given an understanding not to do so. Thereafter the father of Saddam had come with an offer of marriage between his son Saddam and the daughter of Rasul Kha, which was declined.

6] On 31.8.21 at about 6.30 p.m., the brother of Rasul Kha had been called at Joharipura by Shekh Najir Shekh Kadir (father of accused no.1) for having talk

regarding the offer of marriage by Saddam with the daughter of Rasul Kha and since the offer was declined, there erupted a fight between the accused persons on the one hand and Rasul Kha and Noor Kha on the other, in which Saddam the accused No. 1 is said to have assaulted Noor Kha on various parts of the body, including on the head by a knife. The applicant No. 1 Shekh Juber is also said to have assaulted deceased Noor Kha on the head by a stick. The accused No. 3 Shekh Juned is also said to have assaulted the deceased Noor Kha on his head by an iron rod, which is the cause of death as per the PM report, which indicates only one injury on the head. The assault by the applicant No. 2 Shekh Najir is on the legs and the assault by the applicant no.1 Shekh Juber is by a stick on the back of Rasul Kha. Though the statement of Mohammad Nishad Mohammad Shabbir (page 144) indicates an assault by Shekh Juber on the head of Noor Kha, there appears to be contradictions in so far as the assault attributed to the applicant no.1 Shekh Juber. In so far as the applicability of Section 12 of the POCSO Act is concerned, the allegation as per the complaint is only to the effect that the accused No. 1 Saddam was teasing the daughter of the injured Rasul Kha in pursuance to which the offer for marriage was made. The charge-sheet has already been filed on 25.11.2021 and considering the nature of role attributed to the applicants, I do not see any reason to further continue incarceration of the applicants, as a prima facie case for bail

is made out, in view of which the following order.

O R D E R

i] Application is allowed.

Ii] Applicant No. 1 – Shekh Juber Shekh Najir and applicant No. 2 Shekh Najir Shekh Kadir be released on bail in Crime No. 728/2021 registered with Police Station Jalgaon Jamod, District Buldhana, for offence under Sections 302, 307 r/w Section 34 of the IPC and Section 12 of the POCSO Act, each of them executing PR bond in the sum of Rs. 50,000/- with two solvent sureties of the like amount by each applicant.

iii] The applicants shall not tamper with the prosecution evidence or try to influence the prosecution witnesses, directly or indirectly.

iv] The applicants shall not enter the jurisdiction of Police Station Jalgaon Jamod till the completion of trial.

v] The applicants shall appear on each and every date in the sessions trial and shall ensure that the trial shall not be protracted on their count.

vi] Any violation of any of the conditions shall result in cancellation of bail.

7] Criminal application, if any, shall stand disposed of accordingly.

JUDGE

Rvjalit