

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

CRIMINAL APPLICATION (BA) NO. 232 OF 2022

Nilesh S/o. Babanrao Mandhare

Vs.

State of Maharashtra

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

Court's or Judge's orders

Mr. J.R. Kidilay, Advocate for the applicant.
Mrs. Shamsi Haider, APP for the respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/03/2022

Heard Mr. Kidilay, learned counsel for the applicant and Mrs. Haider, learned APP for the non-applicant/State.

2. At the outset, Mr. Kidilay, learned counsel for the applicant submits, that though the First Information Report indicates, that Section 336 of the Indian Penal Code has been imposed, however the same has been corrected to Section 436 of the Indian Penal Code. Mrs. Haider, learned APP for the non-applicant/State, upon instructions submits, that this position is correct and the applicant is accused of an offence punishable under Section 436 of the Indian Penal Code.

3. The applicant has been arraigned for the offence

punishable under Sections 436 of the Indian Penal Code in Crime No. 112/2022. The incident is dated 09/02/2022 at about 10.45 in the night, the First Information Report is dated 10-02-2022 and the applicant has been arrested on 11-02-2022.

4. Mr. Kidilay, learned counsel for the applicant submits, that the applicant has been arrested on the basis of suspicious and nothing. He further submits, that the applicant has been falsely implicated on account of threat being administered to Ajay Patil, the nephew of the complainant. On account of a tiff between them in the morning on the date of the incident due to tearing of the net covering the shop in which the applicant is claimed to have threatened to burn down the shop of the said Ajay Patil. He further submits, that the shop of the applicant himself was adjacent to the shop of the complainant and has also been destroyed in the fire and it is improbable, that the applicant would set fire to his own shop. It is further contended, that the shops were not constructed structure of cement and bricks but street side vending shops were constructed of bamboos and green net roof, and therefore, the provisions of Section 436 of the Indian Penal Code (for Short, "IPC") would not be attracted and Section 435 of the IPC is attracted which is the bailable offence. Therefore, he submits that the applicant is entitled for bail.

5. Mrs. Haider, learned AP for the respondent/State, opposes the application and submits, that the applicant was a person last seen to have gone towards the spot of the incident, by Ajay Babarao Patil, Malabai Kundlik Mendhe and Anjanabai Pandharinath Mandhare and considering that he had threatened to burn down the shop, was rightly refused the bail.

6. A perusal of the FIR as well as the case diary indicate, that the complainant and several other persons, appearing to be the seeds vendors besides the road approaching Mahakali Temple in Police Station Kharangana. The FIR and case diary do not indicate that these shops are permanent structure made of bricks and cement but there appears to be made of bamboo and net roof, which would *prima facie* indicate the inapplicability of Section 436 of the IPC. There are no eye witnesses to indicate that the act being done by the applicant of setting fire to the shops. Moreover, the applicant himself had a shop besides the shop of the complainant, which is also stated to have burned in the fire considering which, a *prima facie* case for bail is made out. Hence, the following order.

ORDER

1. The application is allowed.
2. The applicant Nilesh S/o. Babanrao Mandhare be

released on bail in Crime No. 112/2022 for an offence punishable under Section 436 of the Indian Penal Code, on his executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.

3. The applicant shall not tamper with the prosecution evidence or try to influence the prosecution witnesses directly or indirectly.
4. The applicant shall not be involved in any similar type of offence.
5. Violation of any of the above conditions shall result in cancellation of bail.
7. Pending application/s, if any, shall stand disposed of accordingly.

JUDGE

B.T.Khapekar