

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

Criminal Application (BA) No. 624 of 2022

Irfan Khan Rauf Khan

Versus

The State of Maharashtra, through Police Station Officer, Wardha (City),
Tq. and Dist. Wardha

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

Court's or Judge's Order

Shri P.W. Mirza, Advocate for the applicant.

Shri V.A. Thakare, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 28th JUNE, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 730 of 2021 dated 7th July, 2021 registered with Police Station Wardha (City) for the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code and Section 4 read with Section 25 and 27 of the Arms Act.

2. Learned counsel for the applicant submits that applicant is in jail since last eleven months. He further submits that after completion of investigation, his further custody is not necessary. He submits that

there are discrepancies in evidence. He submits that if the statements of injured are considered which were initially recorded as dying declarations and as they survived it is treated as statement under Section 161 of Code of Criminal Procedure, there are discrepancies about the date and time of incidence, which are fatal.

3. Learned counsel for the applicant submits that there was no recovery from the applicant under Section 27 of the Evidence Act.

4. Learned counsel for the applicant submits that it was a group fight and counter First Information Report were filed. He submits that there are no criminal antecedents to the discredit of the applicant. Accordingly, he prays for grant of bail.

5. Learned Additional Public Prosecutor strongly opposed the application and submits that it was not a group fight which is clear from the injury reports of both the groups. It is pointed out that the injured in this case were hospitalized for more than 20 days, whereas injuries sustained by the accused in this case were simple in nature.

6. Learned Additional Public Prosecutor points out that the applicant was having gupti with him and said gupti was recovered from the co-accused Naushad under Section 27 of Evidence Act. He further

submits that as the offence is very serious and if the applicant is released on bail, there is a possibility that he will pressurize the prosecution witnesses. Accordingly, he prays for rejection of the present application.

7. I have perused the chargesheet and First Information Report.

8. It appears that Crime No. 727 of 2021 was registered on 6th July, 2021, on a complaint by Rahul Dilip Khatri against one Aashif Motya for the offence punishable under Sections 394 and 506 of Indian Penal Code. Present First Information Report is the outcome of the said First Information Report.

9. The injuries caused to the injured were of serious in nature and they were hospitalized for more than 20 days which shows that the injuries were of grievance in nature. Whereas, the injuries sustained by accused in the present matter, were of simple in nature.

10. This Court vide order dated 10th December, 2021 while granting anticipatory bail to the injured in a counter First Information Reports, have observed nature of injury of both the groups which read thus:

“8. In view of the aforesaid, it is clear that the applicants were seriously injured and they were required to be hospitalized for more than 20 days. In contrast to this, the injured persons in the crime

in which the applicants are praying anticipatory bail, are found to have sustained contused lacerated wound. This particular aspect was considered by this Court while protecting the applicants by granting interim protection. The applicants who are granted ad-interim pre-arrest bail were directed to attend the police station. There is no dispute on the part of the prosecuting agency that the applicants have not followed the terms and conditions imposed upon them.”

11. Thus, considering the allegations made in the First Information Report, it appears that accused persons came at the spot of incident with intention and assaulted the injured with weapons like sword, knife gupti etc.

12. There may be some discrepancies in the statement of the injured under Section 161 of Code of Criminal Procedure and the contents of the First Information Report, however, it will be part of the trial.

13. In the above referred backdrop, there is a the possibility that if the applicant is released on bail, he may pressurize the prosecution witnesses or he may not be available for trial, cannot be ruled out.

14. In the circumstances, looking to the seriousness of offence and severity of punishment, I am not inclined to grant the bail to the applicant. Accordingly, the application is rejected.

15. At this stage, learned counsel for the applicant submits that liberty may be granted to the applicant to move afresh application in case there will be no progress in near future.

16. Liberty is granted to the applicant, if there will be no progress in trial, in next one and half years, he may move a fresh application for grant of bail, before the trial Court.

[ANIL S. KILOR, J.]

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