

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

CRIMINAL APPLICATION (BA) NO. 864 OF 2022

Sheikjh Sonu Sheikh Jabbar .Vs. State of Maharashtra, through P.S.O. Wardha City

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

Court's or Judge's Order

Shri A.M.Jaltare, Advocate for the applicant.

Shri A.R.Chutke, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 15/09/2022

Heard.

2. The applicant is seeking bail in connection with Crime No. 1590 of 2018, registered with Police Station Wardha (City), District: Wardha, for the offences punishable under Sections 395, 397 and 427 of the Indian Penal Code, 1860 read with Sections 4, 25 of the Indian Arms Act, read with Section 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime, 1999.

3. Shri A.M. Jaltare, learned counsel for the applicant submits that, the applicant was not named in the FIR. However, he has been arraigned as accused, only because, he is the brother of the main accused Sheikh Shanu. It is submitted that the applicant has been falsely implicated in the alleged offence.

4. It is further submitted that, the applicant was arrested on 30/07/2021, and after investigation, the charge-

sheet has been filed. It is pointed out that, there is nothing incriminating against the applicant. Accordingly, he prays for grant of bail.

5. On the other hand, learned APP strongly opposed the present application and she submits that in a memorandum under Section 27 of the Indian Evidence Act, 1872, the co-accused Sheikh Sohel have disclosed that the applicant was present at the spot, at the time of incident and he was waiting outside the restaurant near the Auto to help the co-accused to run away from the spot of occurrence.

6. The learned APP further submits that, though the applicant is not named in the FIR, in the material collected by the Investigating Officer during the investigation it has come that, the applicant was present at the time of the incident. Accordingly, she prays for rejection of present application.

7. I have perused the Charge-sheet, FIR and the application.

8. From the charge-sheet, it can be seen that, the applicant was not named in the FIR. Nothing has been pointed out to show the involvement of the applicant in the alleged offence. Though the memorandum under Section 27 of the Indian Evidence Act, 1872 is not meant to find out the role of any accused in the crime, however, even if the memorandum of recovery is considered, the only role attributed to the applicant is that, he was waiting outside

the restaurant near Auto to help the other accused persons to run away from the scene of crime, in Auto.

9. From the charge-sheet, it is further seen that the identification parade was not carried out. Thus, considering the character of evidence collected against the applicant in the present matter coupled with the period of incarceration and the fact that the investigation is completed, I am of the opinion that further custody of the applicant is not necessary.

10. It is informed that, except the main accused Sheikh Shanu all other accused persons are released on bail, against whom serious allegations are made. Thus, on the ground of parity also, the applicant is entitled for grant of bail.

11. As far as the antecedents are concerned, there is no similarity or commonality. Furthermore, he has been discharged in one of the cases and in one case he was acquitted.

12. Thus, in the backdrop of the above referred observations, there is a reasonable ground to believe that the applicant is not guilty of the alleged crime and there is no possibility that he may commit the similar offence, if he is released on bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant in connection with 1590 of 2018, registered with Police Station

Wardha (City), District: Wardha, for the offences punishable under Sections 395, 397 and 427 of the Indian Penal Code, 1860 read with Sections 4, 25 of the Indian Arms Act, read with Section 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime, 1999, the applicant shall be released on bail on furnishing P.R. Bond of Rs.20,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station on 1st of each month between 10.00 a.m. to 11.00 a.m., till the culmination of the trial.
- d) The State is at liberty to apply for cancellation of bail, in case of breach of any condition or if applicant commits any similar or serious offence.
- e) The applicant shall not tamper with the prosecution witnesses.

The criminal application is **disposed of** accordingly.

JUDGE