

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

CRIMINAL APPLICATION (BA) NO. 961 OF 2022

Sheikh Hafiz Sheikh Kadar **Vs.** State of Maharashtra, through P.S.O. P.S. Vasantnagar
Pusad, Tq. Pusad, Dist. Yavatmal.

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

Court's or Judge's Order

Shri A.S. Mardikar, Senior Advocate a/b Shri Sameer Khan, Advocate for the
applicant.

Ms K.R.Deshpande, 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. 363 of 2021, registered with Police Station Vasantnagar, Tq. Pusad, District Yavatmal, for the offences punishable under Sections 302, 109, 120-B, 34 of the Indian Penal Code, 1860 and Sections 3 and 25 of the Arms Act, 1959.

3. Shri A.S. Mardikar, learned Senior Advocate submits that, though in the FIR the allegations against the applicant are of conspiracy, however, subsequently the story has been improvised and through some statements of the witnesses, it is tried to create a story that at the time of incident, the applicant was present at the spot and he pushed the deceased because of which he fell down on the ground and thereafter accused Nos.1 and 2, fired through

there pistols at the deceased. He submits that, because of such improvisation there are contradictions in the statements of witnesses, which are fatal.

4. It is further submitted that, some of the eye witnesses did not disclose the name of the applicant whereas, some witnesses speak about presence of the applicant and his role. He, therefore, submits that, it creates doubt about the credibility of the witnesses.

5. He submits that, co-accused Faizal Khan and Usama Ahmed have already been released on bail and if the role attributed to the applicant is considered with the role attributed to them, the applicant is similarly circumstanced, and accordingly he is entitled for grant of bail of the principle of parity.

6. It is pointed out that, the applicant is in jail from 25/07/2021 and investigation is completed. He, therefore, submits that considering the character of evidence collected by the investigating officer against the applicant and the fact that similarly circumstanced co-accused have already been released on bail, his further custody is not necessary.

7. He, further points out that, as far as the antecedents are concerned, out of nine offences two offences are pending. Whereas in five offences he has been acquitted and in two offences A-Summary is filed. He, therefore, submits that the antecedents will not come in the way of the applicant while praying for grant of bail.

8. On the other hand, learned APP strongly opposed the present application and she submits that there are witnesses, who named the applicant and also attributed his specific role.

9. She further submitted that, as the offences are very serious and there are antecedents, this Court may not grant bail to the applicant. Accordingly, she prays for rejection of the present application.

10. In the backdrop of submissions of the learned Senior Advocate for the applicant and the learned APP, I have perused the charge-sheet and the application.

11. From the charge-sheet, it appears that the investigating officer has recorded the statements of witnesses.

12. If the statements of witnesses namely Shaikh Sahil Shaikh Vajir, Shaikh Saden Shaikh Shakil, Shaikh Asif Shaikh Usman, are considered on one hand, and the statements of witnesses namely Syad Naimuddin Saiyad Mujfaroddin, Saikh Ayub Shaikh Mohammad, Izaj Khan Mijaj Khan and Mustkim Ali Fahim Ali on the other hand, there are major contradictions.

13. The witnesses Syad Naimuddin Saiyad Mujfaroddin, Saikh Ayub Shaikh Mohammad, Izaj Khan Mijaj Khan and Mustkim Ali Fahim Ali were present at the time of incident and they are the eye witnesses. However, they do not speak about presence of the applicant at the time of incidence or attribute any role as stated by

Shaikh Sahil Shaikh Vajir, Shaikh Saden Shaikh Shakil, Shaikh Asif Shaikh Usman

14. Similarly, if the statement of Shaikh Sadil Shaikh Shakil is considered which was recorded on 25/07/2021 i.e. on the date of incident itself, it will reveal that he narrates about the things which had taken place on 26/07/2021, namely he states that on the next date after postmortem the body was brought to the house of the deceased for last rites.

15. Thus, it creates doubt about the veracity of the said statement and credibility of the said witnesses for the simple reason that in a statement dated 25/07/2022, he has stated the fact of taking body of the deceased to his house for last rites on next day i.e. on 26/07/2021.

16. Thus, in the above referred backdrop, considering the contradictions in the statements of witnesses and the allegations made in the FIR about conspiracy, *prima-facie*, it is difficult to arrive at any conclusion about the role of the applicant in the alleged offence.

17. In the circumstances, I am of the opinion that, the applicant is entitled for grant of bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant in connection with Crime No. 363 of 2021, registered with Police Station Vasantnagar, Tq. Pusad, District

Yavatmal, for the offences punishable under Sections 302, 109, 120-B, 34 of the Indian Penal Code, 1860 and Sections 3 and 25 of the Arms Act, 1959, 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 and 16th of each month between 10.00 a.m. to 12.00 noon, 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 the applicant commits any serious offence.
- e) The applicant shall not tamper with the prosecution witnesses.

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

JUDGE