

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

CRIMINAL APPLICATION (APL) NO. 1226 OF 2022

Abdul Hameed Abdul Rashid, Aged
 about 42 years, occ. Lecturer,
 Mangrulpir, Tq. Dist. Washim, At present
 Chaprasipura, Camp Amravati, Tq. &
 Distt. Amravati.

... APPLICANT

VERSUS

State of Maharashtra, through Police
 Station Officer, Police Station,
 Mangrulpir, Distt. Washim

... NON-APPLICANT.

Shri R.L. Khapre, Senior Advocate a/b Shri Pushkar
 Deshpande, Advocate for the applicant.
 Mrs. M.H. Deshmukh, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED. : 08.09.2022.

ORAL JUDGMENT :

Heard. **ADMIT.** Heard finally by consent of learned
 Counsel appearing for both parties.

2. The Applicant has challenged the order dated
 06.09.2022 passed by the Additional Sessions Judge whereby the

interim protection has been refused in an application filed by the applicant for grant of pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure (the Code). The learned Senior Counsel appearing for the applicant has heavily criticized the order under challenge by stating that the Trial Court without considering the factual aspect, alleged role and a plea of alibi substantiated by documents has refused to exercise discretion in granting interim protection.

3. The non-applicant/State resisted application by contending that the Trial Court was right in refusing to grant protection since the applicant's name was mentioned in the First Information report and his overtact has been specified. Moreover, it is reiterated that the plea of alibi cannot be considered while deciding the pre-arrest bail application.

4. At the instance of report lodged by the informant-lady Crime No.704 of 2022 was registered against in all 13 persons including the applicant for the offences punishable under Sections 307, 436, 452, 143, 147, 148, 149, 294 and 506 of the Indian Penal Code. In anticipation of arrest the applicant who is

numbered as accused no.3 in the First Information Report has applied to the Court of sessions for grant of pre-arrest protection. When the matter has come up before the Trial Court, it has declined to grant interim protection, but postponed the matter on 12.09.2022 by issuing notice to the State. It is submitted that the modus adopted by the Trial Court is against the law since in terms of Section 438 of the Code, the Court either ought to have rejected the application forthwith or issued an interim protection to the applicant. It is apparent that the Trial Court has not rejected the application at once but thought it fit to call the report of State by declining interim protection.

5. The learned Senior Counsel by placing reliance on the attendance certificate issued by the Government Polytechnic College, Amravati agitated the plea of alibi. He placed reliance on some decisions of different High Courts to contend that the plea of alibi can be considered at the time of bail for which there is no legal bar. Since the main application is pending, I refrain myself from making any comments on the said aspect.

6. Perusal of First Information Report indicates that the

role ascribed to the applicant is of assaulting injured Shahebaz Khan by fighter at his chest. The main allegation of assaulting by means of knife at the chest are against the co-accused Javed. The learned Senior Counsel has pointed out that at the same time, in fact there was assault on the group of applicant for which the First Information Report bearing Crime No.703 of 2022 was already registered at 1.34 am of 03.09.2022. According to him, though the incident in questioned took place on 02.09.2022 at 12.00 noon, the existing First Information Report has been belatedly lodged on 03.09.2022 at 4.21 am i.e. after getting the knowledge of counter First Information Report.

7. The limited challenge exists in this petition is about the grant of interim protection. I am purposefully not dwelling upon the facts in detail as well as the issue canvassed about consideration of plea of alibi, for the reasons as stated above that the main application is pending.

8. Having regard to the role ascribed to the applicant his liberty can be protected since the matter is fixed after three day i.e. on 12.09.2022 by the Trial Court for final hearing. In view of

that, the following order is passed :

- (a) The application is allowed.
- (b) The impugned order dated 06.09.2022 passed in Application No. 260 of 2022 is quashed and set aside.
- (c) In the event of arrest, applicant/accused Abdul Hameed Abdul Rashid be released on interim bail in connection with the Crime No. 704 of 2022 registered with the Mangrulpir Police Station, District Washim for the offence punishable under Sections 307, 436, 452, 143, 147, 148, 149, 294 and 506 of the Indian Penal Code on his furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.
- (d) The applicant shall attend the concern Police Station on every alternate day commencing from tomorrow i.e. from 09.09.2022 in between 10.00 am to 12.00 noon till further orders.
- (e) The applicant shall not tamper with the prosecution evidence in any manner.
- (f) Interim order shall remain in force till the decision of main application.

9. The Trial Court shall make every endeavour to decide the main application within one weeks from 12.09.2022.

10. The application stands disposed of accordingly.

(VINAY JOSHI, J.)

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