

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (BA) NO.1139 OF 2022

Sayed Rahemat Sayed Bashir and another

Vs.

State of Maharashtra, through DGP & PP Khamgaon, For PSO, Sonala, Tq.
Sangrampur, Dist. Buldhana

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

Shri R.M. Daga, Advocate for applicants.

Shri S.M. Ghodeswar, APP for non-applicant/State.

CORAM : G.A. SANAP, J.

DATE : OCTOBER 10, 2022.

Heard learned Advocate for the applicants and
learned Additional Public Prosecutor for the non-applicant.
Perused the record and proceedings.

2. The applicants are accused nos.8 and 9, respectively, in Crime No.88/2022 registered at Police Station, Sonala, Tq. Sangrampur, Dist. Buldhana for the offence punishable under Sections 120B, 302, 326, 324, 323, 143, 144, 147, 148, 149, 152 read with Section 34 of the Indian Penal Code (IPC), under Section 135 of the Maharashtra Police Act and under Sections 4 and 25 of the Arms Act.

3. It is the case of the applicants that the charge-sheet has been filed in the trial court. It is the case of applicant no.1 that he is prosecuted for the offences punishable under

Sections 120B, 326, 324, 323, 143, 144, 147, 148, 149, 152 read with Section 34 of the IPC and Section 135 of the Maharashtra Police Act. It is the case of the applicant no.2 that he is prosecuted for the offences punishable under Sections 120B, 324, 323, 143, 144, 147, 148, 149, 152 read with Section 34 of the IPC and Section 135 of the Maharashtra Police Act. It is stated that in the statements of the main witnesses recorded under Section 164 of the Code of Criminal Procedure, no role has been attributed to these applicants in respect of assault on the deceased. It is submitted that considering the volume of the evidence proposed to be adduced in the case, completion of the trial would take its time. These applicants/accused cannot be prosecuted for the murder of the deceased. It is submitted that subject to the appropriate conditions the applicants may be released on bail.

4. The learned Additional Public Prosecutor submitted that though the investigating officer in the result of investigation has attributed the offences punishable under Sections 326 and 324 to the applicants, the overall material is required to be taken into consideration. The learned Additional Public Prosecutor further submitted that considering the serious nature of the crime and possibility of tampering with the prosecution evidence, this may not be a fit case to enlarge the applicants on bail. The learned Additional Public Prosecutor further submitted that if the applicants are released on bail, they may pressurize or threaten the

prosecution witnesses.

5. In order to consider the rival submissions, I have gone through the copy of the charge-sheet placed on record. It is seen from the charge-sheet that in the statement of the informant recorded under Section 164 of the Cr.P.C., no role has been attributed to the applicants in the incident of actual assault on the deceased. Similarly, their names have not been mentioned in the statement. It is true that a general statement has been made in the report attributing role of assault, after incident of stabbing has taken place, at the instance of some other accused. At this stage, in order to appreciate the submissions, the Court would be required to analyze the material from the point of deciding the bail application. After going through the charge-sheet and material compiled in the charge-sheet, I do find substance in the submissions advanced by the learned Advocate for the applicants. The summary of investigation clearly indicates that these applicants/accused have not been prosecuted for commission of murder. They have been prosecuted for the offence punishable under Sections 326 and 324 with other sections. In the facts and circumstances, this is a fit case to grant bail to the applicants/accused at this stage. The apprehension placed on record by the learned Additional Public Prosecutor shall be taken care of by imposing appropriate conditions. In the facts and circumstances, rejection of bail application is not a solution. The solution would be to impose appropriate

conditions. It is made clear that the above observations are for the limited purpose of deciding the bail application. The learned trial Judge while framing the charge shall not get influenced by these observations. The learned trial Judge at the stage of hearing the argument under Section 226 of the Code of Criminal Procedure shall consider the entire material and proceed to frame the charge as per law. Hence, I pass the following orders:

ORDER

- i. The criminal application is allowed.
- ii. The applicant no.1 (accused No.8)– Sayed Rahemat Sayed Bashir and applicant no.2 (accused No.9) - Sayed Barkat @ Bhurya Sayed Bashir, be released on bail in connection with Crime No.88/2022 registered at Police Station, Sonala, Tq. Sangrampur, Dist. Buldhana, on their furnishing PR bond in the sum of Rs.50,000/- each and each one submitting one or two sureties in the like amount.
- iii. The applicants/accused nos.8 and 9 shall not tamper with the prosecution evidence and they shall not threaten or pressurize the prosecution witnesses.
- iv. The applicants/accused nos.8 and 9 shall not enter village Bawanbir, Tah. Sangrampur, Dist. Buldhana.
- v. With these, the application stands disposed of.

JUDGE

Wagh