

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

CRIMINAL APPLICATION (BA) NO.1147 OF 2022

Sahil s/o Mukhtar Ali Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri C.R. Thakur, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant/State.
Shri G.D. Dani, Advocate to assist the prosecution.

CORAM : G.A. SANAP, J.

DATE : NOVEMBER 18, 2022.

The applicant, who is accused no.5 in Crime No.206/2022 registered with Police Station, Sadar, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, has made this application for bail.

2. It is the case of the accused that he has been falsely implicated in the crime. His name was not stated in the FIR. Only three accused persons were named in the FIR with specific overtact attributed to them. The accused no.4, who is similarly circumstanced, was granted anticipatory bail by the Sessions Court. The informant and other witnesses have even not stated that the accused no.5 has carried any weapon or committed any overtact. It is submitted that considering his role stated by the informant in his supplementary statement and remaining eye witnesses, he cannot be attributed common intention in the commission of the crime. The

charge has been framed. The trial may take its own time for completion. It is submitted that considering his role, he may be granted bail. He is ready to abide by the conditions that may be imposed by the Court.

3. The State through Investigating Officer has filed reply and opposed the application. It is contended that specific role of this accused has been stated in the supplementary statement by the informant as well as by the remaining eye witnesses. The crime committed by the accused is serious in nature. The charge has been framed. The trial may not take much time for completion. It is further contended that if this accused is granted bail as prayed for then he would tamper with the prosecution evidence. The possibility of pressurizing and threatening informant and remaining eye witnesses cannot be ruled out.

4. Learned advocate assisting the prosecution has filed the reply. In the reply the facts stated in affidavit filed by the Investigating Officer have been reiterated.

5. I have heard learned advocate for the applicant/accused, learned Additional Public Prosecutor for the non-applicant/State and learned advocate assisting the prosecution. Perused the record and proceedings.

6. It is to be noted that while deciding the bail application, the merits of the matter cannot be gone into. Evidence cannot

be tested on merits. While deciding the bail application seriousness of the crime, the stage of the investigation, the prima facie role attributed to the concerned accused in commission of the crime, possibility of the accused fleeing from justice and possibility of tampering with the prosecution evidence and/or threatening the prosecution witnesses need to be borne in mind.

7. In order to highlight the role attributed to this applicant/accused, learned advocate for the applicant took me through the FIR, supplementary statement of the informant and statements of eye witnesses. Perusal of the FIR would show that accused nos.1 to 3 were specifically named in the FIR. It is stated in the FIR that one unknown person had accompanied the known accused nos.1 to 3. It is further seen on perusal of the supplementary statement of the informant and the statements of the eye witnesses that in the main incident of assault on the deceased, *prima facie*, no role has been attributed to this accused. It is seen on perusal of the record that role attributed to this accused to some extent is identical to the accused no.4, who has been granted anticipatory bail. The investigation in the crime is complete. After filing of the charge-sheet, the charge has been framed.

8. Learned Additional Public Prosecutor submitted that the CA report is not yet received. In my view, considering the facts stated in the FIR *vis-a-vis* the role attributed to this accused, his further incarceration in the prison is not

warranted. The apprehension placed on record by the learned Additional Public Prosecutor and learned advocate assisting the prosecution can be taken care of by imposing appropriate conditions, considering the stage of the trial.

9. In view of above facts and circumstances, I am inclined to grant bail to the applicant/accused no.5. Hence, I pass the following order:

ORDER

- i. The criminal application is allowed.
- ii. The applicant (accused No.5)– Sahil s/o Mukhtar, be released on bail in connection with in Crime No.206/2022 registered at Police Station, Sadar, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on his furnishing PR bond in the sum of ₹1,00,000/- with one solvent surety in the like amount.
- iii. The applicant/accused no.5 shall not tamper with the prosecution evidence.
- iv. The applicant shall not threaten or pressurize the informant or prosecution witnesses in any manner.
- v. The applicant/accused no.5 shall not enter the city of Nagpur save and except on the date of the trial and that too for the purpose of attending the Court.

JUDGE

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