

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

CRIMINAL APPLICATION (BA) NO.1154 OF 2022

Mohd. Ayub S/o Mohd. Akil .Vs. State of Maharashtra, through P.S.O. Nandanvan,
Nagpur

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

Court's or Judge's Order

Shri R.K. Tiwari, Advocate for the applicant.

Ms Shamsi Haider, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 05/12/2022

1. Heard.
2. The applicant is seeking bail in Crime No.592 of 2021, registered with Police Station: Nandanvan, District: Nagpur, for the offences punishable under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOC Act").
3. In this case, the allegations are that the accused persons assaulted the injured whereas, co-accused Shaikh Shahrukh inflicted blow by knife in the abdomen of the injured and in his back.
4. Though in the First Information Report (FIR), the applicant was not named however, in the statements of witnesses namely Arshad Ali Razaq Ali, Irshad Shaikh Shaikh Sher Mohammad, Shaikh Israel Shaikh Ismail recorded on 25.10.2021, 26.10.2021 and 27.10.2021

respectively, they named the applicant. However, in a supplementary statement recorded on 07.01.2022 of the Arshad Ali Razaq Ali and statement under Section 164 of the Code of Criminal Procedure recorded on 11.01.2022, he did not disclose the name of the applicant and same is the position in respect of two other above named witnesses.

5. From the statements of witnesses dated 25.10.2021, 26.10.2021 and 27.10.2021, it gives first impression that the witnesses were present on the spot and they are the eye witnesses. However, subsequent statements recorded on 07.01.2022 and statement under Section 164 of the Code of Criminal Procedure give different impression that they were not present when the incident took place. Thus, it creates doubt about veracity of prosecution case against the applicant and therefore, though it is alleged that the applicant is a member of organised crime syndicate, considering the material available on record there is a reasonable ground to believe that the applicant is not involved in the alleged offence. Further in absence of incriminating material against the applicant, I am of the opinion that, the only fact that the provisions of MCOC Act are invoke, is not sufficient to deny bail to the applicant.

6. There are two antecedents i.e. one is the Bombay Police Act and another is 427 of I.P.C. and Arms Act. Since, there is no commonality, there is also a reasonable ground to believe that if the applicant is released

on bail there is no possibility that he may repeat the offence. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No.592 of 2021, registered with Police Station: Nandanvan, District: Nagpur, for the offences punishable under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station as and when his presence is required.
- d) The applicant shall not tamper with the prosecution witnesses.
- e) The applicant shall not leave the jurisdiction of the concerned Police Station without permission of the Court.

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

JUDGE