

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

CRIMINAL APPLICATION (BA) NO.1176 OF 2022

Shekh Saddam @ Sardar Shekh Najir .Vs. State of Maharashtra, through P.S.O., P.S.
Jalgaon Jamod, Tq. Jalgaon Jamod, Dist. Buldhana and another

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

Court's or Judge's Order

Shri S.V. Sirpurkar, Advocate for the applicant.

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

CORAM : ANIL S. KILOR, J.

DATED : 30/11/2022

1. Heard.
2. The victim is served. None appeared on behalf of the victim.
3. The applicant is seeking bail in Crime No.728 of 2021, registered with Police Station: Jalgaon Jamod, District: Buldhana, for the offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act").
4. The prosecution story is that on 31.08.2021 the informant Sayyed Amin Sayyed Afsar lodged the report with Police Station stating therein that his cousin daughter is studying in 10th Standard and one accused Shekh Saddam

alias Sardar Shekh Najir used to misbehave with her. The said Saddam also appears to have proposed her for marriage with her father. However, her father Rasul Khan was not ready to perform marriage.

5. On 31.08.2021 Shekh Najir (father of Saddam) had come to the house of Nur Khan with uncle of Afrin and talks regarding the marriage proposal were going on and the girl refused to perform the marriage. At that time, quarrel took place between the parties. Accused Saddam started assaulting Nur Khan inside the house. Later on they came out of house and at 7.30 p.m. Shekh Basir assaulted Nur Khan by iron rod due to which Nur Khan collapsed. To intervene the said scuffle, Rasul Khan came there, however, Saddam assaulted him by knife on stomach thrice and on head. The accused Shekh Najir also assaulted Nur Khan by stick. Shekh Juber assaulted Rasul Khan in his back. The other persons came and they pacify the quarrel. The injured were taken to hospital at Jalgaon Jamod.

6. I have perused the charge-sheet and the statements of witnesses and thereupon, I have find favour with the submission of Shri Sirpurkar, learned counsel for the applicant that offence under Section 302 of the Indian Penal Code (IPC) will not attract against the applicant and he is not the author of injury which was caused to the deceased.

7. Furthermore, from the statements of witnesses, it can be seen that it was not pre-meditated but it took place suddenly, which further shows that there was no such intention of the applicant to commit any murder or the offence under Section 307 of the IPC. No doubt the offence is serious and the injured was hospitalized for seven days.

8. Moreover, considering the incriminating material against the applicant, *prima facie* it can be said that at the most Section 307 of the IPC would apply to the applicant and thus, considering the maximum punishment for the said offence coupled with the period of incarceration of the applicant who is in jail from last more than one year, I am of the opinion that the applicant is entitled for grant of bail.

9. Further, it is also necessary to consider the age of the applicant who is 20 years old and as there is nothing to point out that if the applicant is released on bail, he will not be available for the trial, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant in Crime No.728 of 2021, registered with Police Station: Jalgaon Jamod, District: Buldhana, for the offences punishable under Sections 302 and 307 read

with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO Act”), shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the territorial jurisdiction Jalgaon Jamod, till the culmination of the trial, except for trial.
- d) The applicant shall provide the address with nearest Police Station and attend the same on 1st of each month during 10.00 a.m. to 12.00 noon till culmination of trial.
- e) The applicant shall not tamper with the prosecution witnesses.

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

JUDGE