

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

CRIMINAL APPLICATION (BA) NO.1254 OF 2021

Saif Ali s/o Asif Ali

Vs.

State of Maharashtra Through Police Station Officer, Police Station, Barshi Takli,
District Akola

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

Court's or Judge's orders

Mr. Akshay Naik, Advocate for applicant.
Ms. S. Z. Haider, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/01/2022

Heard Mr. Naik, learned counsel for the
applicant and Ms. Haider, learned Additional Public
Prosecutor for non-applicant/State.

2. The applicant is arraigned for an offence punishable under Sections 302, 307, 326, 324, 143, 147, 148, 188 and 504 of the Indian Penal Code, read with Sections 4/25 and 3/25 of the Arms Act.

3. The FIR indicates that on 20.05.2021, when one Irfan had been to Shegaon, for his cotton business, he is claimed to have been, at the point of a knife, plundered by snatching Rs.2,92,000/-, which were received by him on account of the said business, by one Guddu Raj, who was residing in the same locality as the said Irfan. On returning back, when Guddu Raj and his uncles were confronted, they had promised to return the

money. This position was reiterated on 24.05.2021 when meeting was held at about 2.30 p.m at Axa Ginning. However, at about 4.30 p.m. when the complainant and his two brothers were sitting near the temple besides their house, they heard commotion, wherein they found that one Aminoddin, Zulfoddin and Tipu were hurling abuses and while they were being confronted, two four-wheelers containing 4 – 5 persons had come on the spot, which persons had a firearm, knife, sword and iron-pipe in their hands. The person holding firearm was one Khijar, who had fired at the complainant, however nobody was hurt. Thereafter, it is alleged in the complaint, that the persons, who had come in the four-wheeler had assaulted Mohammad Sakib Abdul Gaffar (deceased) and Shaikh Nadim Shaikh Munir by knife, sword and iron-pipe. When the firearm was fired, the people from the locality had rushed to the spot, looking to which, the persons who had come to assault ran away. The applicant, has been arrested on 25.05.2021 at 12.15 p.m. along with two other persons.

4. Mr. Naik, learned counsel for the applicant submits, that there is nothing on record to implicate the applicant in the said incident, except for two things, one the recovery under Section 27 of Indian Evidence Act, of the sword, which according to him, has not been used at all, as it is all rusted, as per the statement of recovery. He further submits, that Maksud Khan Mehmood Khan whose statement has been recorded, on the next day in the Police Station, has not identified the applicant, in a

test identification parade, but the applicant was named by the police, whereupon it is claimed that Maksud Khan has identified him. He submits, that no identification parade whatsoever has been conducted, which was required, since the assault was also claimed to have been committed by certain unknown persons. Inviting my attention to the statement of Sk Nadim Sk. Munir, he submits, that the assault is by a knife upon both Sk. Nadim Sk. Munir as well as the deceased Mohammad Sakib Abdul Gaffur. He therefore, submits that no action whatsoever of any assault is attributed to the applicant of any nature. The applicant is resident of same locality and it was impossible for the persons not to have identified him in case, he was present in the assault.

5. Learned Additional Public Prosecutor, fairly admits that no identification parade has been conducted. According to her, the statement of Maksud Khan Mehmood Khan (page 126) and the recovery are the actions, which connect the applicant to the crime and therefore, the application be rejected.

6. It is an admitted position, that though in the incident, it is claimed that there were certain unidentified persons involved and the applicant along with two other persons were arrested on the next day i.e. 25.05.2021, no test identification parade has been conducted for the reasons unknown. Sk. Nadim Sk. Munir attributes the assault to the person holding the knife, which even considering the statement of Maksud Khan Mehmood

Khan (page 126), was one Sk. Washim Sk. Noor and not the applicant. Not a single witness has pointed out, who attributes the presence of the applicant, on the spot. The sword which has been recovered, is admittedly rusted one, without any blood stains. The statement of Mohammad Sakib, as per the case diary, was recorded on 13.01.2021 and attributes assault by knife. There is admittedly delay in recording the statements. The charge-sheet has been filed on 20.08.2021.

7. Considering the above position, in my opinion, since *prima facie* the allegation as made against the applicant that he is involved in the incident, is at the most tenuous, I do not think any purpose would be served by continuing the incarceration of the applicant. I therefore, allow the application, by passing the following order.

ORDER

- 1] The criminal application is allowed.
- 2] The applicant be released on bail in Crime No.306 of 2021, registered with Police Station Barshitakli for the offence punishable under Sections 302, 307, 326, 324, 143, 147, 148, 188 and 504 of the Indian Penal Code and read with Sections 4/25 and 3/25 of the Arms Act, on executing a bond in the sum of Rs.1,00,000/- (Rs. One Lakh) with two solvent sureties of like amount.
- 3] The applicant shall not tamper with the prosecution witnesses.
- 4] The applicant shall diligently attend the Sessions Court on each and every date.

(5)

21.ba.1254.2021

5] It is made clear that in case it is found that the applicant has indulged into any act of tampering or influencing the prosecution witnesses, the State shall be entitled to apply for cancellation of bail.

JUDGE

Sarkate