

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

CRIMINAL APPLICATION (BA) NO.1342 OF 2021

Aftab Ashfaq Khan

Vs.

State of Maharashtra Through its Police Station Officer, Yashodhara nagar Police
Station, Nagpur.

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

Court's or Judge's orders

Mr. Y. Y. Humne, Advocate for applicant.

Mr. A. R. Chutke, Additional Public Prosecutor for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/01/2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard Mr. Humne, learned counsel for the applicant and Mr. Chutke, learned Additional Public Prosecutor for the non-applicant/State.

3. The applicant seeks bail in Crime No.837 of 2020, registered with Yashodhara Nagar Police Station, Nagpur for offence punishable under Sections 302, 324, 323, 504, 392, 397, 201 read with Section 34 of the Indian Penal Code, Section 37(1) (3), 135 of the Maharashtra Police Act and Sections 4, 25, 27 of the Indian Arms Act.

4. Mr. Humne, learned counsel for the applicant submits that the applicant was merely driving the motorcycle with the other two accused riding pillion and was not aware of the intention of the other two accused, and specifically of the co-accused Raza, to assault the deceased. He further submits that the charge-sheet is filed and except for the role of driving the motorcycle, no other action is attributed to the applicant. Out of the three accused, namely, Raza, Manoj and the applicant, only Raja, is claimed to have assaulted to the deceased with a knife. He further submits that the statements of the eyewitnesses, namely, Nurullah and Shukrullah have been recorded seven days after the incident. However, even in their statements, no role is attributed to the applicant, except driving the motorcycle, as against which, the action of assault on deceased with knife has been directly attributed to Raza, from whom the knife and clothes have also been seized. He therefore, submits that the applicant be released on bail.

5. Learned Additional Public Prosecutor for the non-applicant/State submits that the applicant is having criminal antecedents on account of registration of Crime No.15 of 2020, punishable under Sections 325 and 504 of the Indian Penal Code with Police Station Old Kamptee and Crime No. 486 of 2020 punishable under Section 379 with Police Station, New Kamptee, and therefore, his release may not be directed.

6. Considering the nature of the offence and the material on record, and the statements of the eyewitnesses namely, Nurullah and Shukrullah, who do not attribute any action of the present applicant and so also the fact that the death of the victim has been due to a knife blow, which is attributed to the co-accused Raza and the fact that the charge-sheet has already been filed on 23.02.2021, I do not see any reason to further continue the incarceration of the applicant, who has been arrested on 26.11.2020. The present criminal application is therefore allowed, subject to the following conditions.

1] The applicant shall be released on bail in Crime No.837 of 2020, registered with Yashodhara Nagar Police Station, Nagpur for offence punishable under Sections 302, 324, 323, 504, 392, 397, 201 read with Section 34 of the Indian Penal Code, Section 37(1) (3), 135 of the Maharashtra Police Act and Sections 4, 25, 27 of the Indian Arms Act on executing a personal bond of Rs.50,000/- (Rupees Fifty Thousand only) with a solvent surety of like amount.

2] The applicant shall not indulge in any criminal activity while on bail. Even a singular violation of this condition shall entail in cancellation of bail.

3] The applicant shall report to the concerned Police Station on every Monday and Thursday between 10.00 a.m. to 2.00 p.m. and shall obtain acknowledgment of his attendance in the diary separately maintained. Breach of this condition shall also result in cancellation of bail.

4] The applicant shall not make any attempt to tamper any evidence or to influence the witnesses directly or indirectly.

(4)

15.ba.1342.2021

5] The applicant shall also not leave the Country without permission of this Court.

JUDGE

Sarkate