

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

CRIMINAL APPLICATION (BA) NO. 11/2023

SHEKH JUNED @ BASHIR SHEKH NAJIR
VS

THE STATE OF MHA. THR. PSO PS JAMOD TQ.JALGAON
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

Ms Garima Jain, counsel h/f Mr S.V.Sirpurkar, counsel for applicant.
Mr S.M.Ghodeswar, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/07/2023.

1. Heard.
2. The present application is preferred by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with crime No. 728/2021 registered at Police Station Jalgaon (Jamod) District Buldhana for the offence punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012. The applicant is arrested on 01/09/2021 and since then he is jail.
3. The crime is registered on the basis of a report lodged by Sayyad Amin Sayyad Afsar against the present applicant and the other co-accused, on an

allegation that the informant's cousin brother's daughter, who was studying 10th Standard was harassed by one of the co-accused Sheikh Saddam @ Sardar Sheikh Najir. He used to misbehave with her. It is further alleged that the said Saddam proposed her to marriage. However, the father of the girl was not ready for the marriage and rejected the marriage proposal. On 31/08/2021, Sheikh Najir had come to the house of Nur Khan with Uncle of Khan Afrin and communicated regarding the marriage proposal. At that time, a quarrel took place between the parties, and Saddam assaulted the Nur Khan inside the house. Later on, they came out of the house at about 7.30 p.m. and the present applicant assaulted Nur Khan by iron pipe, due to which Nur Khan sustained a head injury and succumbed to death.

4. It is further alleged that another accused – Shaikheh Juber assaulted Rasul Khan by means of a knife. On the basis of said report, the police have registered the crime under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offence Act.

5. As per the contention of the applicant, there was a dispute between the parties and cross-complaint was

registered against each other. As far as the role of the present applicant is concerned, now the investigation is completed and the charge-sheet is filed. The other co-accused are released on bail. The present applicant is in jail since 01/09/2021, there is no progress in the trial. Considering the investigation is completed and charge-sheet is filed, no purpose will be served by keeping him behind the bar and prays for releasing him on bail.

6. The said application is strongly opposed by the State on the ground that the present applicant has assaulted the deceased by means of iron rod. If the applicant is released on bail, he will tamper the prosecution evidence and oppose the application for releasing the applicant on bail.

7. Heard Ms Garima Jain, counsel holding for Mr S.V. Sirpurkar, learned counsel for the applicant. She reiterated the contention and invited attention towards the recitals of the FIR as well as various statements of the witnesses. She also invited attention towards the cross-complaint which is lodged against the informant and other co-accused, on the basis of the report lodged by Sheikh (Saddam) Juber Sheikh Najir. She submitted that considering that now the investigation is completed, there is no allegation against the present

applicant that he harassed the girl. The said allegation is against Saddam, the other co-accused Sheikh Juber Sheikh Najir is already released on bail. Considering the same, the present applicant be released on bail.

8. Learned APP strongly opposed the present application on the ground that there is a prima-facie material against the present applicant to connect him with the alleged offence. If he is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

9. Having heard learned counsel for the applicant and learned APP. Having gone through the recitals of the FIR. There is specific allegation against the present applicant that he has assaulted the deceased by means of iron rod by giving a blow on his head. The P.M. Report shows that the deceased has sustained one injury on the head i.e. lacerated wound of 6 x 2 cm on fronto parietal junction. Another injury sustained by the deceased is the lacerated wound of the right 1st metacarpal, admittedly, this injury is not assigned to the present applicant. Due to the said injuries deceased has also sustained internal injuries like under scalp hematoma present over fronto parietal junction and occipital (mid region). He has also compound fracture of fronto parital bone of junction of size 4 x 2 cm in

right side region. Thus, the allegation in FIR is substantiated by the medical evidence also. One injury is sustained by deceased due to blow given by applicant. At the same time, it also reveals that the cross-complaint registered against the informant and other family members, on an allegation that they have also assaulted the present accused persons. Now, the investigation is already completed charge-sheet is already filed, the applicant is behind bar since 01/09/2021, and there is no progress in the trial. The co-accused Shekh Juber Shekh Najir who is already released on bail.

10. Considering the nature of role attributed to the applicant, admittedly, he has attributed the prime role in the assault. However, considering the investigation is completed and only ground raised by the State is that, if he is released on bail he will tamper with the prosecution evidence. Taking into consideration the said apprehension, the application can be allowed by imposing certain conditions. Except these routine allegation of tampering of the witnesses, I do not see any other reason to keep him behind the bar. Hence, I proceed to pass the following order:

Criminal Application is allowed.

- a) The applicant- Shekh Juned @ Bashir Shekh Najir is released on bail in connection with crime No.728/2021 registered at Police Station Jalgaon (Jamod) District Buldhana for the offence punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.
- b) The applicant shall not enter into the vicinity of Jamod Jalgaon, till recording of the evidence of the witnesses.
- c) The applicant shall furnish his cell phone number and address with address proof.
- d) The applicant shall attend his concerned Police Station as and when called.
- e) The applicant shall not induce, threat, or promise any witnesses who are connected with the alleged offence.

Criminal Application is **disposed of**.

JUDGE