

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (BA) NO. 26/2023

Shaikh Sameer Shaikh Anis

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Shegaon Rly.Stn., Dist.Buldana

.. Respondent

.....
Mr. M Badar, Advocate for the applicant

Mr. A.M.kadukar, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 13th February, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 28th July 2022 in Crime No.120/2022 for the offences punishable under Sections 302 of the Indian Penal Code registered at Shegaon Railway Police Station, Tq. Shegaon Dist. Buldana.

2. Briefly stated, the case of the prosecution is that the applicant has assaulted by fists and bows to one Roshan Solanke on Platform no.1 of Malkapur Railway Station. Roshan fell down. He was admitted in the hospital where he succumbed to his injuries. The applicant was blamed for the assault, but the Investigating Officer has not collected the evidence to fix his identity. The learned APP submits that in the CCTV footage three persons were seen on the platform, namely, the applicant, the deceased and one Pradip Chavhan. It appears that initially Pradip was arrested but later, on having found no evidence against him, a closure report

u/s.169 of Cr.P.C. was filed. Thereafter, the applicant came to be arrested but then he has not been subjected to test identification parade and no one has identified him.

3. There is only one eye witness to the incident, namely Ashabai, whose statement was recorded on 9th July 2021 whereas the incident has occurred on 5th July 2002 i.e. four days after the incident. She stated that the applicant and one person were both under the influence of alcohol and got involved in some altercation. The other person has hit the deceased on head so also on stomach by fists and blows. The deceased fell down, the other person picked up a stone from a nearby place and hit the deceased on stomach. Thereafter the other person fled away.

4. The learned Advocate for the applicant submits that this statement is contrary to the post-mortem report. According to him, the postmortem report does not mention of any injury on the stomach of the deceased.

5. Be that as it may, the fact remains that the person who has assaulted the deceased has not been identified by any witness including Ashabai. In the circumstances, it will be quite challenging for the prosecution to prove the guilt of the applicant.

6. The charge-sheet has been filed on 3rd October 2022. However, the charges are yet to be framed and the commencement

and conclusion of trial will take some time. When enquired, the learned Advocate submits that there are no criminal antecedents against the applicant. He is residing at Akola since birth.

7. In the circumstances and considering the evidence against the applicant, no purpose would be served in keeping the applicant behind bars, whereas the interest of the prosecution can be protected by putting the applicant to certain terms.

8. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

9. Hence, the following order :

(i) The Application is allowed.

(ii) The applicant- Shaikh Sameer Shaikh Anis, be released on bail, in connection with Crime No.120/2022 registered with Shegaon Railway Police Station, Dist. Buldana for offences punishable under Section 302 of the Indian Penal Code, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate

the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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