

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

CRIMINAL APPLICATION (BA) NO. 54/2023

(BHARAT RAJENDRA KUDEWAL **VERSUS** STATE OF MAHARASHTRA, THR. PS RAMNAGAR, WARDHA)

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

Court's or Judge's order

Shri S.R. Dube, counsel for the applicant.

Shri I.J. Damle, Additional Public Prosecutor for the non-applicant.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 21, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of regular bail.

The applicant has been arrested on 16.08.2022 in Crime No.745 of 2022 registered with Police Station Ramnagar, Wardha for the offences punishable under Sections 302 read with 34 of the Indian Penal Code. The accusation against the applicant is that he alongwith co-accused have committed murder of one Amol in the intervening night of 15th of August and 16th of August, 2022. The basic contention of the applicant is that there is no admissible evidence against him.

I have gone through the statements of witnesses with the able assistance of the learned counsel for the applicant and the learned Additional Public Prosecutor. First witness is Sushil Jugnake. He states that on 15.08.2022 when he came to his house he saw his brother Prashant talking with Mahesh Masram and Bharat Kudewal (present applicant). He states that after seeing him both Mahesh and Bharat left the place. Prashant told witness Sushil that Mahesh and Bharat had kept knife in the pant and that Mahesh was telling him that one person would be killed today. Similar is the statement of Prashant.

The next witness is Ravindra Kalamkar. He runs a hotel. On 15.08.2022 when he, Amol, Rakesh and Mahesh were in the hotel at about 6.00 p.m. Amol asked wages to Mahesh. There occurred quarrel on this count and Amol abused Mahesh. Mahesh slapped Amol. At about 8.00 p.m. Mahesh left the hotel. He closed the hotel at 11.00 p.m. and slept there. At 12.00 in the night, he saw that Mahesh with his friend Bharat had came to the hotel. They were talking amongst

themselves that murder of one person is to be committed. Thereafter they left the hotel.

The learned Additional Public Prosecutor made an attempt to convince that the above evidence is sufficient to show the complicity of the applicant with the crime.

However even if the statements of witnesses are accepted at their face value, there is absolutely nothing to indicate that the applicant has committed murder of Amol. The evidence could only indicate that Mahesh and applicant were talking with each other that one person would be eliminated. According to the prosecution the said person is Amol. However in absence of any admissible evidence in this regard, it is difficult to hold that the applicant has committed the crime.

The charge-sheet has been filed on 19.10.2022. The charges have not yet been framed. It will take time to conclude the trial. On being asked the learned counsel for the applicant submits that there are no criminal antecedents against the applicant. He is residing at the given address since long time.

In these circumstances, though the learned Additional Public Prosecutor opposes the application, considering the evidence collected against the applicant in my view no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution could be protected by putting the applicant to appropriate terms.

The observations made in this order are prima-facie in nature and for the purpose of deciding the present application. The Trial Court shall not be influenced by the above observations. Hence, the following order is passed:-

ORDER

1. The criminal application is allowed.
2. Applicant-Bharat Rajendra Kudewal be released on bail in connection with Crime No. 745 of 2022 registered with Police Station Ramnagar, Wardha for the offences punishable under Sections 302 read with 34 of the Indian Penal Code on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.

3. The applicant shall at the time of execution of bond furnish his address with 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.
4. The applicant shall regularly attend the Court and co-operate 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.
5. 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/her from disclosing such facts to the Court or any Police Officer.
6. The applicant shall maintain the law and order.
7. In case of breach of any of the aforesaid conditions, the trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The criminal application is disposed of in aforesaid terms.

(ANIL L. PANSARE, J.)

APTE