

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

...

**CRIMINAL APPLICATION (BA) NO. 72/2023**

Ashish s/o Sadashivrao Wandekar  
**versus**

..Applicant

The State of Maharashtra  
Th: Its PS Sonegaon Dist. Nagpur.

..Respondent

.....  
Mr. R.K.Tiwari, Advocate for the applicant  
Mr. I.J.Damle, APP for Respondent  
.....

**CORAM:** ANIL L. PANSARE, J.  
**DATED** : 24<sup>th</sup> February, 2023.

**PC:**

Heard learned counsel for both the sides, at length.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 23.02.2021 in Crime No.30/2021 registered at Police Station Sonegaon, Nagpur, for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 323, 120B and 201 of the Indian Penal Code; Sections 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

3. The learned counsel for the applicant submits that Mayur Sherkar, the prime accused in the crime has been released on bail vide order dated 02.08.2022 in Criminal Application (BA) No.823/2022. He further submits that it is Mayur who assaulted the deceased by means of knife and stones. The general allegations are made against co-accused that they have also assaulted the deceased by knife and stones. There is only one eye witness, namely, Shubham Jagdale whose statement has

been recorded one month after the incident. This Court while releasing Mayur Sherekar on bail vide order dated 02.08.2022 has considered the order passed by this Court in Criminal Application (BA) No.1097/2021 and accordingly recorded its finding in paragraph nos. 8 and 9 as under :

*“8. The Hon’ble Single Bench of this Court while granting bail in Criminal Application (BA) No.977 of 2021, has observed thus :*

*“3. The case of the prosecution is that the backdrop of the deadly assault was Nilesh Naidu threatened Mayur Sherekar since Nilesh Naidu perceived that Mayur Sherekar was an impediment in securing bail for his friend Kharat. Insofar as the applicant is concerned, the only material on record is the statement of Mr. Shubham Jagdale who claims to have witnessed the incident from some distance and who named the applicant as one of the six accused who all assaulted Nilesh Naidu with sharp edged weapons. This statement is recorded nearly one month after the date of incident.*

*4. Learned Additional Public Prosecutor Mrs. Kalyani Deshpande does not refute the submission of learned counsel Mr. Tiwari that other than the said belated statement, there is no material whatsoever to implicate the applicant in the crime.”*

9. Considering the above referred observations, which are equally applicable to the case of the applicant, as he is similarly circumstanced, even though there are criminal antecedents against the applicant namely two cases under Sections 323 of IPC and one case under section 307 of the IPC this Court cannot deny bail to the

applicant.”

4. The learned counsel for the applicant submits that all other accused, except the present applicant, have been released on bail. He submits that Suchit Chahande has played a similar role as that of the applicant and that he has been released by this Court vide order dated 26.09.2022 in BA No. 1097/2022.

5. The learned APP fairly states that the role played by the applicant and Suchit are the same.

6. If that be so, there is no reason why the applicant should not be released on bail.

7. The charge-sheet has been filed. The charge has not yet been framed. It will take time to commence and conclude the trial. In view of the above and since the co-accused who has played similar role, has been released on bail, there is no reason why the applicant should not get the benefit of parity. The interest of prosecution can be protected by putting the applicant to appropriate terms.

8. 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 :

ORDER

(i) The Application is allowed.

- (ii) The applicant- Ashish Sadashivrao Wandekar, be released on bail, in Crime No.30/2021 registered with Police Station, Sonegaon Dist. Nagpur (city) for the offences punishable under Sections 143, 147, 148, 149, 302 and 323 of the Indian Penal Code and Sections 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act, on he furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees twenty five thousand) with one or two sureties 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 mobile number(s) and 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 condition, 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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