

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

CRIMINAL APPLICATION (BA) NO. 87/2023

Syed Samir Syed Gayas Inamdar V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr A.S. Mardikar, Senior Counsel with Mr S.V. Sirpurkar, counsel for the applicant.

Mr M.J.Khan, APP for the non-applicant.

Mr A.D. Girdekar, counsel for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12/07/2023.

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. 88/2022 registered at Police Station Saonala, District Buldhana for the offences punishable under Section 120-B, 302, 324, 323, 143, 144, 147, 148, 149 read with Section 34 of the Indian Penal Code. The applicant is arrested on 11/05/2022.
3. The crime is registered on the basis of report lodged by Sheikh Gani Sheikh Gulam Dastagir on an allegation that he along with his wife and deceased son resides at Bawanbir, Tq. Sangrampur District Buldhana. There was a dispute between Syed Juber and the deceased. Therefore, the applicant along with his family

had left Bawanbir and resided at Bodwad District Jalgaon. Prior to 02 months, the applicant came to reside again in Bawanbir along with his family.

It is further alleged that on 3.5.2022 at about 7.30 a.m., the informant and his son Sheikh Rafiq Sheikh Gani had been to Idagah situated near Bawanbir to offer the Namaz. At that time, the co-accused Syed Juber Syed Wajir approach to them and assaulted his son on his right rib and caused grievous injury. Due to which, the deceased fallen down. At the relevant time, Syed Samir Syed Gayas i.e. present applicant came on the spot with an iron pipe and other co-accused came along with weapons in their hand and assaulted the deceased. Due to the assault the deceased has sustained 17 injuries and succumbed to the death. On the basis of said report, the police have registered the offence. As per the allegation, all the accused in furtherance of their common object assaulted the deceased and accused his death and thereby committed an offence.

4. As per contention of the applicant that he falsely implicated in the alleged offence, merely because, there was previous enmity between the informant and the present applicant. As far as the role attributed to the present applicant is concerned, he gave a blow of iron rod on the head of the deceased, the deceased sustained

injury. During investigation it reveals that the deceased has not died, due to the head injury but cause of the death is hemorrhagic shock, due to the stab injury. The stab injury is not attributed to the present applicant. Now the investigation is completed and charge-sheet is filed, the further custody of the present applicant is not required. Other co-accused are already released on bail. No purpose will be served by keeping the present applicant behind the bar.

5. The said application is strongly opposed by the State as well as learned counsel for the informant on the ground that the role attributed to the present applicant is narrated by all the witnesses including the informant. There is direct evidence against the present applicant. The deceased was assaulted by the present applicant, due to the previous enmity. If he is released on bail, he will tamper with the prosecution evidence. Considering the gravity of the offence, criminal application deserves to be rejected.

6. Heard Mr Anil Mardikar, learned Senior Counsel. He pointed out that though there is allegation that present applicant and one Sayyed Samir and Sayyed Salim both have assaulted the deceased by means of stick and iron rod on the head of the deceased. However, Post Mortem Report shows no internal injuries like fracture of

the skull is sustained by the deceased and caused the death of the deceased is due to stab injury. The similar role is attributed to co-accused Sayyed Salim, who is already released on bail. Considering the same, the present applicant has also made out the case to release him on bail. Now the charge-sheet is filed, no purpose will be served by keeping the applicant behind bar hence, he be released on bail.

7. Learned APP Mr M.J.Khan, vehemently submitted that the deceased was attacked by all the applicants, in furtherance of their common object and caused the death. He further submitted that as per the Post Mortem report, the deceased has sustained lacerated wound on the Occipital region which is the vital part of the body. Thus, present applicant is also responsible to cause the death of the deceased. Considering the prima-facie case against the present applicant, bail application deserves to be rejected.

8. Mr A.D. Girdekar, learned counsel for the informant endorse the same contention and resisted the said application.

9. Having heard both the sides and on perusal of investigation papers it reveals that present applicant is arrested on 11/05/2022. The allegation against the present applicant is that he has given blow by iron rod on

the head of the deceased. Admittedly, no internal injury is found on brain and the skull. Para no. 19 of the P.M. Report shows that injury Nos.2 and 3 is mentioned in column No. 17 is noted under the column No.19. It further show that brain is intact. Thus, there is no fracture to either to the skull or to the brain, due to the assault on the head of the deceased either by the iron rod or by the stick. The cause of death is hemorrhagic shock, due to the stab injury. The stab injury is assigned to the accused-1. Considering the other co-accused are already released on bail to whom approximately similar role is attributed. Now, the charge-sheet is filed and the trial will take its own time for its disposal.

10. Considering the fact that, blow given by the present applicant by accepting the allegation as it is. So, the case of the present applicant is on the different footing. As far as the common object is concerned, it is a matter of evidence. At this stage, considering the charge-sheet is filed, and no purpose will be served by keeping the present applicant behind bar, the application deserves to be allowed. Accordingly, I proceed to pass the following order;

- a) The applicant is released on bail in connection with Crime No. 88/2022 registered at Police Station Saonala, District Buldhana for the

offences punishable under Section 120-B, 302, 324, 323, 143, 144, 147, 148, 149 read with Section 34 of the Indian Penal Code on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.

- b) The applicant shall not enter into the premises where the prosecution witness is residing in the jurisdiction of Bawanbir, Tah. Sangrampur, District Buldhana.
- c) The applicant shall not induce, threat or promise any witness in any manner and shall not contact the witnesses in any manner.
- d) The applicant shall furnish his cell phone number and address with address proof.
- e) The applicant shall attend the trial Court regularly.

Criminal Application is disposed of.

JUDGE