

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

CRIMINAL APPLICATION (BA) NO. 122/2023

Chetan alias Chandu s/o Ramesh Jumade
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 R.M.Daga, counsel for applicant.

Mr A.M.Khan, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/07/2023.

1. Heard.
2. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 1546/2021 registered at Police Station Wardha (City), District Wardha for the offences punishable under Sections 302, 147, 148, 201 read with Section 149 of the Indian Penal Code and under Section 4(25), 27 of the Arms Act. The applicant is arrested on 28/11/2021 since then he is in jail.
3. The accusation against the present applicant is that on 27/11/2021, the present applicant along with co-accused has committed the murder of one Manoj Dhanorkar by entering into the house of Pravin Giri. On

the basis of Police have registered the crime against the accused. During the investigation, the name of the present applicant is revealed and therefore, he is arrested.

4. As per the contention of the applicant, his name is not mentioned in the FIR. During the investigation also, the role of the present applicant is not revealed. The Test Identification Parade is also not discloses that he has identified by the witnesses during the Test Identification Period. Nothing is recovered from him to show the involvement. His clothes are also recovered at the instance of co-accused Akash Jaiswal. Thus, there is no material against the present applicant to connect him with the alleged offence. Now, the investigation is completed and charge-sheet is filed, no purpose will be served in keeping him behind the bar. For a sufficient period i.e. on 28/11/2021, he is behind bar. Hence, he be released on bail.

5. The said application is strongly opposed by the State on the ground that during the investigation, it revealed that present applicant was also along with co-accused who with their common object, committed the murder of the deceased. During the investigation, the role of the present applicant is revealed and therefore, he is arrested. Though investigation is

completed and charge sheet is filed, however, there is apprehension that if the applicant is released on bail, he will tamper with the prosecution. There are criminal antecedents against the applicant. Hence, he prayed for rejection of the application.

6. Heard Mr. R.M. Daga, learned counsel for the applicant. He reiterated the contentions and invited my attention towards recitals of the FIR. Admittedly, in the FIR the name of co-accused Akash is mentioned. During the investigation, the incriminating articles are recovered at the instance of other co-accused. Nothing is recovered from the present applicant. As far as the statement of the witnesses is concerned, none of the witnesses has named the present applicant as an assailant on the deceased. Even panchanama, the name of the applicant is mentioned, however, the said contention is not admissible in evidence. He further invited my attention towards the Test Identification Parade Panchanama which also not clarified which of the co-accused, the persons are identified by the witness. The test identification parade nowhere shows that the present applicant was identified either by wife of the deceased or other witness. Thus, there is absolutely no material against the present applicant to connect him with the alleged offence.

7. Per contra, learned APP submitted that the present applicant was involved in the alleged offence. During the investigation, his involvement is revealed. She was put in the Test Identification Parade. The two accused persons are identified by the witnesses. She fairly admitted that the names of the persons who are identified is not mentioned but present applicant was put in the identification parade and she was also identified by the witnesses.

8. Having heard both the sides and on perusal of the investigation papers, the FIR does not disclose the name of the present applicant. The statement of various witnesses is also recorded. The statement also does not disclose the involvement of the applicant in the alleged offence. Admittedly, there is no direct evidence against the present applicant to connect him with the alleged offence. The only material which is collected by the Investigating Officer during the investigation is the Test Identification Parade. Admittedly, Test Identification Parade is not a substantial evidence to connect the present applicant with the alleged offence. Moreover, the Test Identification Parade Panchanama, no where shows that the present applicant is identified by the witness. It only discloses that out of the two accused persons are identified by the witnesses. The Special Executive Magistrate has not clarified which of the

accused are identified by the witness. Thus, at this stage, there is no direct or circumstantial evidence to connect the present applicant with the alleged offence. Considering the material collected by the investigating officer against the present applicant, prima-facie case is not made out against the present applicant.

9. Now, the investigation is completed and charge-sheet is filed. For sufficient period, the applicant is already behind bar. In view of the above, the criminal application deserves to be allowed by imposing certain conditions. Hence, I pass following order:

- a) Criminal application is allowed.
- b) The applicant is released on bail connection with Crime No. 1546/2021 registered at Police Station Wardha (City), District Wardha for the offences punishable under Sections 302, 147, 148, 201 read with Section 149 of the Indian Penal Code and under Section 4,25, 27 of the Arms Act, on executing PR. Bond of Rs. 25,000/- with one solvent surety of like amount.
- c) The applicant shall not enter the vicinity of Kelkarwadi District Wardha till the conclusion of the trial.

- d) The applicant shall not leave the jurisdiction of Wardha District Court without prior permission of the Court.
- e) The applicant shall not induce, threat or promise directly or indirectly in any manner by contacting any witnesses.
- f) The State is at liberty to move application for cancellation of bail, in case of breach of any conditions.
- g) The applicant shall furnish his cell phone number and address along with address proof.
- h) The learned trial Court shall not be influenced by the observation made by this Court while granting the bail application.

Criminal Application is disposed of.

JUDGE