

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

CRIMINAL APPLICATION (BA) NO.165 OF 2023

Shailesh Singh s/o Laxman Singh Mourya

Vs.

State of Maharashtra, through its PSO, PS, Lakadganj, Nagpur

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

Court's or Judge's orders.

Shri D.V. Chauhan, Advocate for applicant.
Shri V.A. Thakre, APP for non-applicant/State

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 27, 2023.

This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant has been arrested on 02.02.2023 in Crime No.42/2023 registered with Police Station, Lakadganj, Nagpur for the offence punishable under Sections 325, 326 read with Section 34 of the Indian Penal Code (for short "IPC").

3. Having heard both sides and having gone through the record, it appears that there are Reports (FIRs) from both sides i.e. from the side of the applicant, which is first in point of time and thereafter from the side of the informant. The case diary indicates that there are series of cases registered against the informant from the year 2013 to 2023. Some of the offences registered against the informant are serious in nature. Therefore, what transpired prior to commission of the crime is of utmost importance to understand the contentions of the applicant.

4. Learned counsel for the applicant has invited my attention to the FIR bearing Crime No.41/2023, which is lodged by the applicant against the informant. The FIR is lodged on 02.02.2023 at 05:05 pm for the offence punishable under Sections 385, 337, 143, 147, 148, 149, 504 and 427 of the IPC. This FIR indicates that on 01.02.2023, applicant along with his staff namely; Hitesh Shah, Ramesh Chandwani, Wasudeo and one more person were present at the country-liquor shop run by the applicant. The informant came there at about 7:30 pm. He demanded extortion money amounting to ₹10,000/- to run the shop. At that time, the applicant and his staff removed the informant from the shop. Annoyed by the treatment given, the informant came back at about 9:30 pm with the wooden stick and abused the applicant. There occurred altercation between the applicant and the informant. On hearing verbal altercation, 10 to 12 persons came there. They all abused the applicant and pelted stones at the applicant. The staff of the applicant then shutdown the shop and ran away.

5. This FIR is then countered by the informant on 02.02.2023 itself but at 05:37 pm. Initially, the FIR was registered under Section 325 of the IPC. Later on the offence under Section 326 of the IPC is added. The informant in the FIR admitted that initial quarrel took place at about 7:30 pm. He also admitted that at about 09:30 pm he came back with stick in his hand. He, however, states that during quarrel, the applicant and his staff members have

beaten him. The applicant has given blow by means of wooden stick on his leg. The informant suffered fracture and was admitted in the hospital.

6. Learned counsel for the applicant has contended that the present FIR is lodged only to neutralize the gravity of FIR lodged by the applicant.

7. As against, the learned APP submits that medical report clearly indicates that the informant has suffered fracture at the right knee.

8. There are in all four accused in the crime in question. Out of these four accused, the learned Sessions Court has allowed the application filed by three but rejected the application filed by the applicant on the ground that it is he who has given blow to the informant and that the possibility of similar such attack cannot be ruled out. In addition, it is recorded that the investigation is not yet completed and that therefore the applicant may threaten the prosecution witnesses.

9. To my mind, it is difficult to perceive that the applicant would be in a position to influence the person who on the face of the record appears to be notorious person. As stated earlier, there are series of cases (20 in numbers) registered against the informant. He is thus acquainted with the police and Court working and therefore is unlikely to get pressurized at the hands of the informant.

10. So far as the merits are concerned, there are statement of the witnesses in the sense the applicant's version indicates that the informant had been to his shop and was removed from the shop. He came back with wooden stick. This act of coming back with wooden stick, *prima facie*, indicate that it is the informant, who has taken the first step in the second quarrel. This does not mean that the applicant is justified in giving blow on the leg of the informant, but then the investigating officer has a vital role to play because after collecting the evidence he be will be in a position to reveal the truth and will definitely place it on the record in the form of final report either against the applicant and his associates or against the informant and his associates. However, considering the criminal antecedents and the fact that informant came at the applicant's shop, it appears that the assault was on provocation by the informant.

11. The intention of the applicant to cause grievous hurt will have to be, therefore, tested in the backdrop of story as narrated above. It is worth mentioning here that the applicant does not have any criminal antecedence and is running a business. Therefore, the applicant has strong roots in the society.

12. When enquired, learned APP submits that investigation is likely to be completed in some days.

13. In the circumstances and considering the factors mentioned above, just on the apprehension that the applicant will tamper with the prosecution evidence or that he will pressurize the prosecution witnesses, will not be sufficient reason to compromise his personal liberty as guaranteed by the Constitution of India. The apprehension put forth can be dealt with by putting the applicant to appropriate terms. Nothing is to be recovered from the applicant. In my considered view, no purpose will be served by keeping the applicant behind the bars.

14. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

15. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Shailesh Singh s/o Laxman Singh Mourya, be released on bail, in Crime No.42/2023 registered with Police Station, Lakadganj, Nagpur for the offence punishable under Section 325, 326 read with Section 34 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹50,000/- with one or two surety in the like amount.
- (iii) The applicant shall not contact the informant in any manner.

(iv) 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 same till the final disposal of the case.

(v) The applicant shall attend concerned Police Station as and when called by the investigating officer, till filing of the charge-sheet and shall cooperate in the investigation. Further, after commencement of the trial, 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.

(vi) 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.

(vii) The applicant shall maintain law and order.

(viii) 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.

JUDGE

Wagh