

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

CRIMINAL APPLICATION (BA) NO. 198 OF 2023

Afzal Khan S/o Yusuf Khan and Another
..VS..

State of Maharashtra through the Police Inspector, Police Station Chandur Railway, Distt.
Amravati.

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

Court's or Judge's orders

Shri V.A. Kilor, Advocate with A.V. Pande, Advocate for Applicants.
Shri S.M. Ghodeswar, A.P.P. for Respondent/State.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 24, 2023.

Heard learned counsel for both the sides.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (in short "the Code"). The applicants have been arrested on 23.09.2023 in Crime No.499/2022 registered with Police Station Chandur Railway, District Amravati for the offence punishable under Section 302, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code.

3. Having heard both the sides and having perused the material placed on record, it transpires that in all seven persons have been blamed for commission of murder of one Naim Khan Raheman Khan. The names of assailants are Karan Yadav Meshram, Deepak Ratan Pawar, Afzal Khan Yusuf Khan (present applicant No.1), Sajid Umar Alias Faruq Shaikh (present applicant No.2),

Mohd. Ashiq Mohd. Abdul Kadar, Sandeep Prabhakar Shende and one juvenile in conflict with law.

4. The story of the prosecution as depicted from the Final Report is that, the informant – Moin Khan Raheman Khan has lodged a report stating therein that, on 21.09.2022 Naim Khan Raheman Khan (deceased) in connivance with his friend, kidnapped daughter of one Sayyed Faruq. The daughter was 15 year old and was kidnapped on the point of knife. Informant is younger brother of deceased Naim Khan. On 23.09.2022, the informant's uncle Rustam Khan informed that Naim Khan is laying in the pool of blood near the residence of Ashpaq. The informant and others visited the spot and removed Naim Khan to Government Hospital, where he was declared dead. The informant, suspecting Sayyed Faruq and his son Sayyed Afroz for the murder, has lodged report with the police.

5. Learned counsel for the applicant submits that Sayyed Faruq and his son Syyed Afroz were neither arrested nor are shown as absconding accused in the charge-sheet. He submits that charge-sheet is completely silent as to whether these two persons have played any role or have been exonerated by the Investigating Agency. He then submits that the name of the applicants is not mentioned in the First Information Report (FIR). Their role is disclosed for the first time on 26.09.2022 i.e. three days after incident through the statements of four eye witnesses. Out of these four eye witnesses, two are

widows of Naim Khan, one his mother of Naim Khan and other is sister of Naim Khan. Their statements are identical.

6. My attention is invited to their statements. These witnesses state that, on 23.09.2022 at about 2.45 a.m. (in the night), they heard some noise and thereafter peeped outside the house, they saw that Deepak Pawar, Afzal Khan - applicant No.1, Sajid Umar @ Pappu - applicant No.2 and Sandeep Shende and his friend have assaulted Naim Khan by means of knife and stick. These witnesses, out of fears, then went inside. On the next date, they were informed that Naim Khan has been taken to hospital and has been declared dead.

7. This role of applicants has been disclosed for the first time on 26.09.2022, the applicants, however, were arrested on 23.09.2022 itself. Thus, it is argued that the Investigation Officer has conducted investigation with pre-determined mind. At this stage, learned A.P.P. submits that applicants were arrested on the basis of secret information which was later on fortified by these four witnesses.

8. Learned counsel for the applicants has rightly argued that the conduct of the witnesses is not usual, in the sense none of these witnesses have made an attempt to save Naim Khan. If the concession of fear is to be given, one can understand that they chose not to intervene but the least these witnesses could have done is

to remove Naim Khan to the hospital immediately after the assailants left the spot.

9. That apart, the learned counsel points out that while lodging FIR the mother of the deceased, who is one out of the four eye witnesses, had been to police station along with informant on 23.09.2022 itself but did not disclose to the police of involvement of applicants in the crime.

10. Learned counsel for the applicants then invites my attention to the say filed by the Sub-Divisional Police Officer (SDPO), Chandur Railway, Amravati before the Trial Court. The say of SDPO indicates that the first person to assault Naim was Deepak Pawar. He assaulted by means of stone. Naim dodged the stone and attempted to leave the place. Sandeep Shende, by holding iron rod in his hand, followed Naim. Other assailants also followed Naim. Naim fell down. At that time, Sajid Shaikh (applicant No.2) picked up a stick and assaulted Naim on his leg. Sandeep Shende assaulted Naim on his head by means of iron rod. Deepak Pawar, Karan Meshram and Sayyed Sanjay assaulted by means of kicks and blows. Mohd. Asif snatched knife from the hands of Naim and assaulted him on his ribs. Karan Meshram gave a kick blow on the face of Naim. Thereafter, the assailants left the place. While fleeing away, Mohd. Asif had thrown the knife and Sajid Shaikh had thrown the wooden stick used in the crime. The say does not disclose the name of two persons suspected by the

informant. When asked, learned A.P.P. could not put forth any reason why these two persons are not named in the charge-sheet or whether they have been exonerated in the investigation.

11. Be that as it may, even if, the say of SDPO, which appears to be the case of the prosecution, is to be accepted on its face value, the role assigned to the applicant No.2 is that he has assaulted Naim by means of stick on his leg and so far as applicant No.1 is concerned, no role is assigned to him.

12. The Postmortem Report indicates that the cause of death is head injury. The head injury has been caused by Sandeep Shende. Thus, the applicants are not the author of injury by which Naim suffered fatal blow.

13. Considering the fact that the informant suspected role of Sayyed Faruq and his son Sayyed Afroz and not of the applicants and further considering the fact that the mother of Naim had been to police station on 23.09.2022 but did not disclose the name of the applicants and further considering the fact that the present applicants are not author of the fatal injury, coupled with the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose will be served by keeping applicants behind the bars. The interest of the prosecution can be protected by putting the applicants to appropriate terms.

14. The charge-sheet has been filed. The charges have not yet been framed. It will take time to commence and conclude the trial. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long.

15. The observations made in this order are *prima facie* and are made for deciding the present application only. The learned trial Court shall not get influenced by the above observations.

16. Resultantly, following order is passed :

ORDER

(i) The Application is allowed.

(ii) The applicants- Afzal Khan S/o Yusuf Khan and Sajid Umar alias Pappu S/o Farukh Sheikh, be released on bail, in Crime No.499/2022 registered with Police Station Chandur Railway, District Amravati for the offence punishable under Section 302, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code on their furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) each with one or two sureties in the like amount.

(iii) The applicants shall, at the time of execution of bond, furnish their 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 applicants shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicants 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 applicants 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.)

Kirtak.

Digitally Signed By:KIRTAK
BHIMRAO JANARDHAN
Signing Date:24.03.2023
20:42