

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

...

CRIMINAL APPLICATION (BA) NO.207/2023

Shaikh Rahim s/o Shaikh Gaffar

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Wathoda, Nagpur

.. Respondent

.....
Mr. R.R. Prajapati, Advocate for the applicant

Mr. I.J.Damle, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 16th March, 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, 1973. The applicant has been arrested on 15.10.2022 in Crime No.406/2022 registered at Police Station Wathoda, Nagpur, for the offences punishable under Sections 302, 120B, 143, 144, 147, 148, 149, r/ws. 34 of the Indian Penal Code.

3. Briefly stated, the case of the prosecution is that there are in all six accused, namely, (1) Sonu @ Ashfaq Sheikh; (2) Shivam @ Dadu Gajbhiye; (3) Mohd. Ibrahim Mohd. Shakil; (4) Mohd. Shakil @ Mohd. Yusuf; (5) Sk. Rahim Sheikh Gaffar (present applicant) and (6) Shahrukh Choote Khan Pathan. The accusation against the present applicant and the co-accused is that all of them have committed the murder of Arif Hussain Adib Hussain.

4. The learned counsel for the applicant submits that the name of the applicant is not mentioned in the FIR. The applicant has been arrested only on the basis of suspicion. *Au contraire*, the learned APP submits that the applicant has played a vital role in the crime, inasmuch as he has supplied knife to the prime accused namely, Shivam @ Dadu Dadu (accused no.2).

5. The FIR indicates that the deceased has narrated the incident to his wife prior to his death and it appears that the deceased had informed that the original accused nos. 1 to 4 have assaulted him by means of a knife.

6. So far as the applicant is concerned, the role assigned to him is that he has provided knife to the main accused. A specific query is made as to who has stated so, to which, the learned APP submits that there is no independent witness on this count, but the applicant's role has been disclosed by accused no.2 Shivam @ Dadu during interrogation.

7. Thus, except for the statement of the co-accused there appears no evidence against the applicant. The confession of co-accused is not admissible.

8. When enquired, the learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The charge-sheet has been filed. The charge has not yet been framed. It will take time to commence and conclude the trial. In the circumstances and considering the nature of scanty evidence against the applicant; as

also the presumption that the person accused of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose will be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

9. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Shaikh Rahim s/o Shaikh Gaffar, be released on bail, in Crime No.406/2022 registered at Police Station Wathoda, Nagpur, for the offences punishable under Sections 302, 120B, 143,144,147,148,149, r/ws. 34 of the Indian Penal Code; on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty 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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