

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (BA) NO. 218/2023

Mumtaz Khan alias Pehelwan Rasul Khan .vs. State of Maharashtra through its PSO PS.
Kapilnagar, Nagpur.

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

Court's or Judge's orders

Mr. S. Afsar, Advocate for applicant.
Mr. S. M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 17, 2023.

This is an application under Section 439 of the Criminal Procedure Code, 1973 for grant of bail. The applicant has been arrested in Crime No.227/2022, registered with Police Station, Kapilnagar, Nagpur, District Nagpur for the offences punishable under Sections 307, 34, 120-B of the Indian Penal Code, 1860 and Sections 3, 5, 25 and 27 of the Arms Act, 1959.

2. Briefly stated the case of the prosecution is that the on 29.05.2022 at about 9.00 pm, one Shakil Ahmed Sabir Ahmed (informant) had been to the pan kiosk. While returning back at about 9.50 pm, two unknown persons came on a motorcycle from behind. The pillion rider fired a bullet from a country made pistol and caused injury near the throat of the informant. Both the persons had covered their faces. It is informed that the informant is involved in activities like gambling/satta. There are couple of others including the present applicant, who are also allegedly involved in gambling/satta. The informant had a dispute with one Ajju Kabadi since last about ten years. On

suspicion, the informant lodged the report against Ajju Kabadi and two unknown persons.

3. It, thus, appears that the informant thought that two unknown persons had shot him at the instance of Ajju Kabadi.

4. The applicant has come up with a case that there is absolutely no admissible evidence against him to show his complicity in the crime. The learned APP, however, submits that one of the charges against the applicant is under section 120-B of the IPC. He then submits that though there is no direct evidence against the applicant, the circumstantial evidence indicates that the applicant has played a major role.

5. As many as five persons have been arrested, namely, Abdul Vakil Khan, Alishah, Anwarkhan, Mohammad Bilal and the present applicant. The learned APP submits that the country made pistol has been recovered in the house search of Anwarkhan. The ballistic report has been obtained, which indicates that the bullet was fired from the said country-made pistol.

6. The role assigned to accused no.4 – Mohammad Bilal is that he has given Rs.50,000/- to the applicant, which in turn was handed over by applicant to accused no.3 – Anwarkhan. It is alleged that accused nos.1 and 2 have purchased pistol from the said amount and the said pistol has been used in the crime.

7. Thus, there is no evidence against the applicant of his involvement in the crime except for transferring amount from one accused to another.

8. Learned counsel for applicant has invited my attention to order dated 13.01.2023 passed by this Court in Criminal Application (BA) No. 1304/2022 wherein co-accused Mohammad Bilal who is said to have given Rs.50,000/- to the applicant, has been released on bail by this Court. The case of the prosecution is that pistol was recovered at the instance of Mohammad Bilal. The entire evidence has been considered in the said order and despite there being criminal antecedents against Mohammad Bilal, this Court has granted bail to him. The allegations against the applicants are of less gravity than that of Mohammad Bilal. The applicant is thus entitled for the reliefs on the ground of parity. In any case, there appears a weak evidence against the applicant.

9. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. The chart of antecedents indicate that four out of six cases have been registered under the Maharashtra Prevention of Gambling Act, 1887. So far as other two cases are concerned, those appear to have been lodged in the year 2011. The status of said cases is not disclosed by the investigating officer. It is common practise of the investigating officer, in bail applications, not to disclose the status of the crime. In many cases, it is found that the accused persons therein have been acquitted. Thus, in absence of status of crime, the chart cannot be taken aid of and even otherwise, considering the nature of evidence, the relief cannot be refused on the ground that couple of cases were filed against the applicant.

10. Considering the fact that the co-accused has been released on bail and further the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

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

12. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Mumtaz Khan alias Pehelwan Rasul Khan, be released on bail in Crime No.227/2022, registered with Police Station, Kapilnagar, Nagpur, District Nagpur for the offences punishable under Sections 307, 34, 120-B of the Indian Penal Code, 1860 and Sections 3, 5, 25 and 27 of the Arms Act, 1959, on he executing PR. Bond in the sum of Rs.25,000/- with one surety 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 same till the final disposal of the case.

(iv) 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.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.

(vi) The applicants shall maintain law and order.

(vii) 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.

(Anil L. Pansare, J.)

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