

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

...

CRIMINAL APPLICATION (BA) NO. 221/2023

Sher Khan @ Sheroo s/o Mujawar Khan

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Wathoda, Dist.Nagpur

.. Respondent

.....
Mr. S.A. Dutonde, Advocate for the applicant

Mr.S.M.Ghodeswar, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 30th March, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 07.09.2022 in Crime No. 328/2022 registered at Police Station Wathoda Dist. Nagpur, for the offences punishable under Sections 302, 326 and 34 of the Indian Penal Code.

2. The accusation against the applicant is that on 12.08.2022 he along with co-accused have committed the murder of one Javed Ali.

3. Having heard both sides and having gone through the evidence, there appears to be two witnesses to the crime, one is Ashish Tagde and another is Shahrukh Pathan. The statement of Ashish Tagde indicates that he has seen accused Irfan assaulting Javed Ali by means of wooden stick and accused Ramzan by means of fist blows. The applicant has also assaulted Javed. The witness does not disclose the nature of assault by the applicant, as to whether by any weapon or by fist and blows.

4. The second witness-Shahrukh Pathan has stated that accused Ramzan and the applicant were assaulting Javed Ali by fist blows. In the concluding paragraph, however, he states that the accused Mohd. Irfan and one Kalim have assaulted Javed Ali by wooden stick but there is no specific role assigned to the applicant.

5. The post-mortem report indicates that the cause of death is head injury which appears to have been caused by Irfan. Thus, *prima facie*, the applicant is not the author of the fatal injury.

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

7. In the circumstances and considering the nature of evidence against the applicant, as also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

8. 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.

9. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Sher Khan @ Sheroo s/o Mujawar Khan, be released on bail, in Crime No. 328/2022 registered at Police Station Wathoda, Dist. Nagpur for the offences punishable under Sections 302, 326 and 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) The applicant shall surrender his passport before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file an affidavit to that effect.
- (viii) 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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