

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

CRIMINAL APPLICATION (BA) NO. 276 OF 2023

Amol S/o Devidas Nimkar

..VS..

State of Maharashtra through PSO, P.S. Darwha, District Yavatmal

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for applicant.

Mr. S.M. Ghodeswar, Additional Public Prosecutor for
non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 15, 2023

Present application under Section 439 of the Code of Criminal Procedure filed by the applicant for grant of bail. The applicant has been arrested on 13.12.2022 in Crime No. 858/2022 for the offences punishable under Sections 302, 307, 323, 336, 201, 120(B) read with Section 34 of the Indian Penal Code and under Section 3, 25 and 27 of the Arms Act and Section 135 of the Bombay Police Act registered at Police Station Darwha, District Yavatmal.

2. The crime is registered on the basis of report lodged by Sau. Nanda Sudhakar Tote – mother of the deceased on an allegations that on 30.09.2022 at about 09.00 am. they went at Darwha from Murtizapur to attend the Court proceeding. At about 11.00 am. they reached at Darwha and when they proceeding towards

Court, one person by name Om Subhash Dudhe along with two unknown persons came in front of them and said co-accused Om Subhash Dudhe pointed out the Gun towards her son and fired one shot towards her son. Said shot hit her son and he sustained grievous injury. She attempted to rescue her son but she could not. As her son sustained grievous injuries and taken to the hospital but he reported to be dead by Medical Officer. On basis of said report, the crime is registered against the said Om Dudhe and two unknown persons. During investigation, the role of the present applicant is revealed to the Investigating Officer, as he assisted the co-accused to disappear the material evidence and hence he has implicated in the alleged crime.

3. As per contention of the present applicant is that he has falsely implicated in the alleged offence in fact, he was not present along with co-accused. Merely on suspicion he has implicated in the alleged offence. Now, the investigation is completed and charge-sheet is filed, his further custody is not required and hence he be released on bail.

4. Said application is strongly opposed by the State on the ground that in all seven accused are involved in the alleged crime. The accusation against them is that they have been killed one Sandip Tote by means of firearm. The evidence indicates the involvement of the present applicant as well as other accused persons. The

deceased was murdered due to the previous enmity between them. Now investigation is completed and trial would be commenced at any time. If the applicant released on bail, he will tamper the prosecution evidence hence bail application deserves to be rejected.

5. Heard Mr. R.M. Daga learned counsel for the applicant. He submitted that only role attributed by the present applicant is that he has taken the co-accused Shailesh Badukle on his motorcycle to one Nikhil Uttamrao Dudhe and requested said Nikhil Uttamrao Dudhe to give his own cloths to the Shailesh Badukle and thereafter Shailesh Badukle has burnt the bloodstained cloths. Thus, only allegations against the present applicant is that he assisted the co-accused to get the other cloths. Thus, the present applicant is not at all concerned with the alleged incident and there is no direct involvement of the present applicant in the alleged incident. Now, the investigation is completed, charge-sheet is filed and no purpose will be served by keeping the present applicant behind the bar.

6. Learned APP reiterated the contention and strongly opposed the application on the ground that there is every likelihood that if applicant is released on bail he will tamper with the prosecution witnesses and hence prayed that the bail application is rejected.

7. Having heard both the sides and perusal of the entire investigation papers admittedly, the name of the present applicant is not mentioned in the First Information Report (FIR). From the investigation papers it reveals from only the statement of one Nikhil Uttamrao Dudhe that present applicant came at his house along with the co-accused Shailesh Badukle and present applicant requested said Nikhil Dudhe to hand over his cloths to the co-accused Shailesh Badukle. Thereafter, Shailesh Badukle has obtained the said cloths and brunt his bloodstained cloths. Thus, only role attributed to the present applicant is that he assisted the co-accused and travel along with him at the house of Nikhil Uttamrao Dudhe. Admittedly, there is no direct involvement of the present applicant in the alleged incident. The applicant is behind the bar since 13.12.2022. The charge-sheet though has been filed, the charge has not yet been framed.

8. Considering the role attributed by the present applicant, his further custody is not required and no purpose will be served by keeping him behind the bar. He is permanent resident of Darwha having permanent abode there. In view of above and considering the nature of role attributed by the present applicant, the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) Application is allowed.
- (ii) The applicant – Amol S/o Devidas Nimkar be released on bail in connection with Crime No. 858/2022 for the offences punishable under Sections 302, 307, 323, 336, 201, 120(B) read with Section 34 of the Indian Penal Code and under Section 3, 25 and 27 of the Arms Act and Section 135 of the Bombay Police Act registered at Police Station Darwha, District Yavatmal on executing P.R. bond of Rs. 30,000/- with one solvent surety in the like amount.
- (iii) The applicant shall furnish his cellphone number and address along with the address proof. Additionally, the applicant shall submit names of his two nearest relatives and their address along with their address proof.
- (iv) The applicant shall not change his residence till final conclusion of the trial.
- (v) The applicant shall not directly or indirectly make any inducement and threat or promise to any of the witnesses of the crime in question.
- (vi) The applicant shall remain present before the trial Court on each and every date.

(vii) In case of breach of any condition, the bail granted to the applicant deserves to be cancelled.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Kirtak