

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

CRIMINAL APPLICATION (BA) NO.282 OF 2023

Mohammad Faizan s/o Mohammad Ilyas

Vs.

State of Maharashtra through PSO Police Station, Balapur, District Akola

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel for applicant.
Mr. S. M. Ghodeswar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/06/2023

1. The present application is filed by the applicant for seeking bail in respect of Crime No.501/2022 registered at Balapur Police Station, District Akola for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The applicant is arrested on 29.12.2022. The crime was registered on the basis of report lodged by Sk. Yasin Abdul Munaf on an allegation that on 22.10.2022 at about 9.45 p.m. his sister Aklim Bee was married with Sayed Asif Syed Umar and the said Syed Asif was demanding the share of his wife in ancestral property of agricultural field. On that count, there was a scuffle between them and the relatives also came there for pacifying the said quarrel. Therefore, there was enmity between the informant and his deceased brother

Sk. Gaffar Sk. Munaf. It is further alleged that on 22.10.2022 at about 6.29 p.m., the informant received the call from his brother Sk. Gaffar on his mobile who informed that near the Nagar Parishad said Asif and two others have assaulted him. Immediately, the informant proceeded to the place of incident and saw that present applicant along with other co-accused were present and the co-accused were assaulted the deceased. He further witnessed that present applicant was standing there by holding weapon in his hand. His brother had already sustained the injuries who was removed to the hospital at Balapur, but he succumbed to the death due to the injury sustained by him.

3. As per the contention of the applicant, he was not at all concerned with the alleged offence. He was implicated merely because he is related to the co-accused Syed Asif Syed Umar. The investigation carried out by the Investigating Officer also shows that no overt act is attributed to the present applicant. Now, investigation is already completed and charge-sheet is also filed. Further custody of the applicant is not required and hence, he be released on bail. He will abide by all the conditions imposed by this Court.

4. The said application is strongly opposed by the State on the ground that *prima facie* material collected during the investigation shows that present

applicant has shared common intention with the co-accused and assaulted the deceased with the deadly weapons. If the applicant/accused is released on bail, he will tamper with the prosecution evidence. Hence, the bail application deserves to be rejected.

5. Heard learned Counsel Mr. Shirpurkar for the applicant. He submitted that even the prosecution case is accepted as it is, the statements of the witnesses shows that only role attributed to the present applicant that he was standing at the spot of incident by holding the sickle in his hand. No overt act is attributed to the present applicant. There is no allegation that he has used the said weapon and gave a blow to the deceased by the said weapon. Considering the role of the present applicant his further custody is not required. He further submitted that bail is a rule and jail is an exception. Considering the role is attributed to the present applicant, he be released on bail. He will abide by all the conditions imposed by this Court.

6. Learned APP Mr. Ghodeswar for the respondent/State strongly opposed the application. However, submitted that as per the statements of the witnesses no overt act is attributed to the present applicant.

7. Heard both the sides. Perused the investigation papers. During the investigation, Investigation Officer has recorded the relevant statements of the witnesses including the statement of the eye witness namely Sk. Yasin Abdul Munaf, Abdul Hasin Abdul Rashid, Sk. Murad @ Jaher Sk. Mujjafar. The statements of the witnesses shows that present applicant was present holding sickle in his hand. Admittedly, prosecution witnesses have not alleged that present applicant has used the said weapon and assaulted the deceased by means of the said weapon. Thus, no overt act is attributed to the present applicant. Considering the role attributed to the present applicant, his application for bail deserves to be allowed by imposing certain conditions. Hence I proceed to pass following order:-

(i) The application is hereby allowed.

(ii) Applicant namely Mohammad Faizan s/o Mohammad Ilyas is hereby released on bail in respect of Crime No.501/2022 registered at Balapur Police Station, District Akola for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Balapur till conclusion of the trial.

- (iv) The applicant shall not tamper the prosecution evidence or induce any witnesses.
 - (v) On the single incidence of tampering or pressurizing the witnesses would result into cancellation of bail of the present applicant.
 - (vi) The applicant shall furnish his detailed address of residence wherein he will choose to reside till conclusion of trial along with address proof.
8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate