

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

CRIMINAL APPLICATION (BA) NO.295 OF 2023
Nilesh S/o Prataprao Shingade Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri R.K. Tiwari, Advocate for applicant.
Shri I.J. Damble, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 11, 2023.

This is an application under Section 439 of the Code of Criminal, 1973.

2. The applicant has been arrested on 01.09.2022 in Crime No.596/2022 registered with Police Station, Hudkeshwar, Nagpur City, Nagpur for the offences punishable under Sections 143, 147, 148, 149, 302, 323, and 504 read with Section 34 of the Indian Penal Code.

3. Heard both sides. The FIR indicates that there occurred quarrel between two groups and ultimately members of both group sustained injuries, one of the injuries was fatal. The informant is one who had quarreled with the members of the group of accused.

4. It so happened that on 27.08.2022 at about 7.00 pm the informant had been to near Gabhane Kirana store to attend nature call. Some of the persons were playing cards (Gambling) The informant was urinating. One of them, Chotu Balapure (accused no.1) abused him and asked him to leave immediately. The couple of person accompanying

Chotu pushed him. The informant fell down. There occurred quarrel between the informant on one side and the accused persons on the other side. The friend of informant namely Chetan pacified the quarrel. Informant came to his room. He called his friend Manav and informed him of the incident. He instructed Manav to call another friend Vaibhav and to get him to his room. Thereafter, the informant and his friend namely Mavan and Vaibhav proceed to the same spot, where earlier quarrel had occurred. The informant asked accused persons as to why did they abuse him . At that time, accused Chotu Balapure, Babu Sakhare, Pravin Shinde and Nilesh Shingale (applicant) rushed towards informant and his friends with an intention to assault. The informant and Manav made an attempt to stop them. Chotu pushed them. Pravin and Nilesh caught hold of Vaibhav Kale. Chotu thereafter assaulted Vaibhav on his chest by means of knife. Vaibhav suffered bleeding injury. Accordingly, report came to be lodged.

5. The informant has, later on, is said to have corrected his statement to the extent that Chotu is not the one, who assaulted Vaibhav by means of knife but it was Pravin Shinde, who has inflicted the fatal blow.

6. Learned counsel for the applicant has invited my attention to the statement of couple of other witnesses to point the discrepancies in the case of the prosecution, however, he states that even if the case of the prosecution is to be accepted at its face value, the accusation against the applicant is that he caught hold of Vaibhav. Thus, Vaibhav is

not the one who has authored the fatal blow. He further submits that the informant's group is the one who is to be blamed for the entire episode. There was absolutely no reason for the informant to get back on the scene of the crime with his friends. The entire quarrel has commenced at the provocation of the informant and his friends. The offence under question is not premeditated. In the circumstances, one cannot blame accused persons of having common object to kill Chotu Balapure and that therefore Section 149 of the IPC will not be attracted. According, he prayed for relief.

7. Learned counsel for the applicant submits further that applicant is married and has wife and two minor children dependent on him. Thus, it is suggested that the applicant is the only bread winner in the family.

8. Learned APP submits that the accusations are serious and that one cannot ignore the fact that a precious life has been lost in the entire episode. He submits that though the informant's group has approached accused person, there was no reason for the accused persons to commit murder. There is further no reason why applicant caught hold of the deceased. He submits that catching hold of a person is as serious as inflicting blow, inasmuch by catching hold, the deceased was prevented from defending himself. Accordingly, it is argued that the applicant is equally responsible for the crime.

9. True it is that accusation, in the present case, is serious. However, for the purpose of granting bail, role played by each accused will have to be considered vis-a-vis

the offence under question. On the point of provocation, it appears that the informant's group has initiated the quarrel that resulted into fatal blow.

10. The offence under question cannot be said to be predetermined and that therefore the learned counsel for the applicant is correct in contending that it will be challenging for the prosecution to prove ingredients of Section 149.

11. The role played by the applicant will have to be considered in the light of the allegations made. As stated earlier, the applicant caught hold of Vaibhav Kale and that Pravin has inflicted fatal blow. Thus, the applicant is not the one, who has authored the fatal blow. It is not clear from the informant's version as to why did applicant catch hold of Vaibhav Kale in the sense whether to facilitate Pravin Shinde to inflict blow or for some other purpose, which of course will be the matter of trial but then even if the case of the prosecution is to be accepted, the applicant could be said to have played a role of lessor gravity than what Pravin Shinde has done, which weighs in his favour.

12. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. Further, it appears that his wife and two minor children are dependent on him. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

13. In view of above and considering the peculiar facts of the case and further considering 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.

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

15. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Nilesh S/o Prataprao Shingade, be released on bail in Crime No.596/2022 registered with Police Station, Hudkeshwar, Nagpur City, Nagpur for the offences punishable under Sections 143, 147, 148, 149, 302, 323, and 504 read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.50,000/- 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 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. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant 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.

JUDGE

Wagh