

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

CRIMINAL APPLICATION (BA) NO. 364/2023

Sadik Ali Habib Ali Pathan V/s State of Maharashtra

AND

CRIMINAL APPLICATION (BA) NO. 501/2023

Sheikh Mehmood Shaikh Kadar and another V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Firdos Mirza, counsel for the applicant (BA No. 364/2023)

Mr. S.M.Ghodeswar, APP for the non-applicant/State (in both applications)

Mr. B.K. Suchak, counsel for Assist to Prosecution. (in both applications)

Mr. S.V. Sirpurkar, counsel for applicants (BA No.501/2023)

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/08/2023.

1. Both the applications are preferred by the applicants for grant of bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with Crime No. 302/2022, registered with Andhera Police Station, Tq. Deulgaon Raja, District Buldhana, for the offence punishable under Sections 143, 147, 148, 452, 326, 324, 307 and 506 read with Section 149 of the Indian Penal Code, Section 135 of the Maharashtra Police Act, 1951 and Section 4/25 of the Arms Act, 1959.

2. The applicant in criminal application No. 364/2023 is arrested on 06/10/2022, whereas the applicants in Criminal Application No. 501/2023 are

arrested on 05/10/2022, and since then they are behind bars.

3. The accusation against the present applicant is on the basis of report lodged by the Rashida Bee Azmat Ali Pathan, on an allegation that on 04/10/2022 at about 11.30 p.m. one Imran Ali Pathan and Adil Ali Pathan entered in a house and one Samir Ali Ajmat Ali was calling them outside the house. Therefore, a dispute arose between them, and in the scuffle, present applicants along with other co-accused assaulted the persons namely Rafik Ajmat Ali Pathan and Samir Ajmat Ali Pathan, who are the husband and the children of informant. In the said scuffle, all the injured have sustained the grievous injuries, and they immediately admitted in the hospital. As per the allegations, there was a previous dispute between them and therefore, they are assaulted by the present applicants and other co-accused.

4. As per the contention of the present applicant that he is witness in the previous incident. He was also assaulted by the family members of the informant. He has lodged the report regarding the threatening to him, on the basis of which crime was registered vide crime No. 303/2022, under

Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code. He was threatened on account that he should settle the dispute and he should not depose against them in crime registered against them under Section 307 of the Indian Penal Code.

5. It is further contention of the present applicant in the alleged incident, he is also assaulted and sustained injuries but the investigation is not carried out fairly and the investigating officer has collected the false certificate. Thereafter, the applicant has applied under the Right to Information Act and collected the injury certificate which shows that he had sustained CLW on the left side of the four-head with profuse bleeding and blunt trauma on the chest and abdomen. This fact is suppressed by the investigating officer while investigating the present crime. Thus the investigation is not carried out fairly and he has been falsely implicated in the alleged offence.

6. It is further contended that even taking into consideration the allegations as it is, the injured has attributed the role of the present applicant to the extent of holding him, and no other role is attributed to him, the other two injured witness though attributed the weapon to him like he was holding a

weapon like a sword in his hand. However, the injury certificate, nowhere shows that the injured have sustained the injuries by a sharp weapon. Thus entire investigation is not carried out fairly and only to implicate the present applicant, This false allegations are made. Now, the investigation is completed and charge-sheet is filed. The injured have not sustained life-threatening injuries. Further custodial interrogation of the present applicant is not required and prays for bail.

7. As far as the contention of the other two applicants in application No. 501/2023 is concerned, it is contended that merely because there was a previous dispute, they are falsely implicated in the alleged offence. Now the investigation is completed and charge-sheet is filed. Though sharp weapons are attributed in the hands of the present applicants but none of the injured have sustained any injury by the sharp weapons. Now, all injured are discharged from the hospital, their custodial interrogation is not required and hence, they be released on bail.

8. Both the applications are strongly opposed by the State on the ground that the injured persons have sustained grievous injuries. They were admitted in the hospital for a long period for 10 to 13 days, and

some of the accused are still absconding, if the present applicants are released on bail, there is apprehension of involvement of the present applicants in the similar types of offence. In view of that application deserves to be rejected.

9. Heard Mr. Firdos Mirza learned counsel for the applicant in the criminal application (BA) No. 364/2023 and Mr. S.V.Sirpurkar, learned counsel for the applicants in the criminal application (BA) No. 501/2023, and Mr S.M. Ghodeswar, learned APP for the non-applicant/State in both the applications, and Mr. B.K.Suchak, learned counsel for the informant in the both the applications.

10. Learned counsels for the applicant reiterated the contentions and submitted that even for the sake of argument, the incident is accepted as it is, the only allegations against the applicant Sadik Ali is that he hold the injured and no weapon is attributed by Rafik Ali who has sustained the injury in the said incident. The another witness namely Ajmat Ali Mehboob Ali, who is also one of the injured witnesses has also attributed the same role, whereas only Samir Ali Hazmat Ali Pathan has exaggerated his version and attributed the weapons in the hands of the present applicant. If the injury certificates are

taken into consideration, none of the injured have sustained the injuries by sharp. Thus, prima-facie it reveals that the investigation was not carried out fairly.

11. Learned counsel Mr. Shirpurkar has also pointed out the previous dispute between the informant and the present applicants. It reveals that in a previous crime, the applicant namely Sheikh Habib Ali Pathan was witness and he was pressurized to settle the dispute, and for that purpose, he was assaulted by the family members of the informant namely the injured that Samir Ali Ajmat Ali Pathan and Ajmat Ali Mehboob Ali Pathan etc. Regarding threatening to the applicant by this injured witnesses, NCR Reports are also lodged.

12. It is pertinent to note that the previous disputes were pending between the parties. Present incident is offshoot of earlier incident. It further reveals that, in the alleged incident, the present applicant has also sustained the injuries, however, the investigating officers who has collected the injury certificate show that no injuries are found on the person of the present applicant, whereas the present applicant has collected the injury certificate under the Right to Information Act, which shows that he has

sustained injuries like CLW of left-side of forehead and blunt trauma. This fortifies that the investigating officer has not carried out the investigation fairly and suppressed the medical certificate of the present applicant. Considering the injuries sustained by the injured, the injuries are by hard and blunt objects. There is no medical opinion that these injuries are life threatening injuries.

13. Learned counsel Mr. S.V.Sirpurkar also reiterated the same contentions and submitted that now the investigation is completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind the bar.

14. On the other hand, the learned APP was strongly opposed by the present application and submitted that still some of the accused were absconding and therefore, the application deserves to be rejected.

15. Learned counsel for the informant submitted that one of the injured has sustained the disability, due to injury sustained. Considering the nature of the crime, the application deserves to be rejected.

16. Having heard both the sides on perusal of the investigation papers, there is no dispute that there was previous enmity between the present applicant and the informant and her family members. It is pertinent to note that the informant, who is the close relative of the present applicant has not named him in the FIR. The FIR nowhere discloses either the name of the present applicant or the role which is attributed to him by the injured. Subsequently, the statements of the injured are recorded. As per the statements of Rafik Ali Ajmat Ali Pathan and Ajmat Ali Mehboob Ali Pathan, only role attributed to the present applicant i.e. Sadik Ali Habib Ali that he holds the injured namely Rafik Ali, whereas Sadik Ali Ajmat Ali, that present applicant was holding the weapon like a sword in his hand. On perusal of the injury certificate, it reveals that none of the injury is sustained by the injured by sharp weapons. All injuries by hard and blunt injuries. Admittedly, there is no opinion regarding the nature of injuries that injuries were life threatening injuries. One disability certificate is placed on record by the informant which shows that there was a temporary disability sustained by Rafik Ali Amjad Ali Khan Pathan. Even that certificate nowhere shows that these injuries were on the vital part of the body and life threatening injuries.

17. Now, the investigation is already completed and charge-sheet is already filed, the injured are already discharged from the hospital, and no purpose will be served by keeping the present applicant behind the bar. However, considering the nature of the dispute pending between the parties, some stringent conditions can be imposed on the present applicants. In view of that, both applications deserves to be allowed. Accordingly, I pass the following order:

- a. Criminal Applications are allowed.
- b. The applicant – Sadik Ali Habib Ali Pathan in Criminal Application (BA) No. 364/2023 and applicants in Criminal Application (BA) No. 501/2023 – Sheikh Mehmood Shaikh Kadar and Jafar Ali Pathan Usman Ali Pathan are released on bail in connection with crime No. 302/2022 registered with Police Station Andhera, District Buldhana, for the offence punishable under Sections 143, 147, 148, 149, 452, 326, 324, 307 and 506 of the Indian Penal Code, 1860 read with Section 135 of the Maharashtra Police Act, 1951 read with Section 4/25 of the Arms Act,

1959, on furnishing P.R. Bond of Rs. 25,000/- each of the applicants with one solvent surety of like amount.

- c. The applicants shall not enter into the village Navin Mandapgao till the conclusion of the trial.
- d. The applicants shall attend the concerned Police Station once in a month till the conclusion of the trial.
- e. The applicants shall not induce, threat or promise, who are connected with the alleged crime.
- f. The applicants shall furnish their cell phone numbers with address along with address proof.

Criminal applications are **disposed of**.

JUDGE