

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

CRIMINAL APPLICATION (BA) NO.389 OF 2023

Sayed Irfan s/o Sayed Islam Qazi

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Dhanaj (Bk),
District Washim

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. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 26/06/2023

1. The present application is for seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.133/2022 registered with Police Station Dhanaj (Bk), District Washim for the offence punishable under Sections 143, 147, 148, 307, 324, 504 read with Section 149 of the Indian Penal Code. The applicant is arrested on 21.06.2022 since then he is in jail.

2. The crime is registered on the basis of report lodged by Vishal Pachpor. The accusation against the present applicant and the other co-accused is that on 20.06.2022 the father of informant namely Rajesh Pachpor was proceeding towards the bus stop for his personal work. At the relevant time, he received a message that his father is abused by one Naim Khan

Rahim Khan. He immediately proceeded towards the spot of incident. At the relevant time, the present applicant also followed him. There was altercation of the words between them and his father as well as he was assaulted by the co-accused. As per further allegation in the said scuffle co-accused Naim Kha gave a knife blow on the right thigh of the informant and also gave a blow of knife in the abdominal portion of his father. As per his allegation at the relevant time, present applicant has also assaulted them by fist blows and his brother Vaibhav was caught hold by the present applicant.

3. On the basis of the said report, police have registered the crime. During investigation, the statement of other injured namely Vaibhav is also recorded. The said Vaibhav reiterated about the incident.

4. It is contention of the applicant that in the FIR as well as in the statement of the injured – Vaibhav no overt act is attributed to him. No weapon is assigned to him. The co-accused Mohasin against whom the similar allegations are made is already released on bail. Now investigation is completed, the charge-sheet is filed and no purpose will be served by keeping him behind bar. He further submitted that the statement of the informant and the injured – Vaibhav is inconsistent regarding his role and considering the same also, the applicant is entitled to be released on bail.

5. The said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present applicant. Moreover, the allegation against the present applicant is that present applicant and other co-accused formed the unlawful assembly and in furtherance of their common object, they have assaulted the informant, his father as well his brother Vaibhav. Considering the role, application deserves to be rejected.

6. Heard learned Counsel Mr. Daga for the applicant. He reiterated the contention and invited attention towards the recitals of the FIR. As per the recitals of the FIR, present applicant followed them when his father was abused near one Pan Shop. It is further alleged in the FIR that present applicant also assaulted them by fist blows. The recitals of the FIR further shows that in the said incident, the present applicant has caught hold another injured – Vaibhav. The statement of Vaibhav is also recorded who has not stated before his statement that he was caught hold by the present applicant. Learned Counsel Mr. Daga submitted that thus the recitals of the FIR and the statement of the another injured – Vaibhav is not consistent one. He further submitted that considering the role attributed to the present applicant, the similar role attributed to one Mohasin who is already released on bail. Thus, on the

ground of parity also the present applicant be released on bail.

7. The learned APP strongly objected the same and submitted that the applicant along with other co-accused charged for the offence that they formed unlawful assembly and in furtherance of their common object, they have assaulted the informant as well his father and brother. Therefore, the offence is made out against the present applicant also. He further submitted that the statement of the eye witnesses sufficiently shows the involvement of the present applicant. If the applicant is released on bail, he will tamper with the prosecution evidence and prays rejection of the application.

8. Having heard both the sides and on perusal of the FIR as well as various statements. It reveals that though informant has stated that his brother was caught hold by the present applicant and one Mohasin, when he was assaulted. However, Vaibhav nowhere stated that he was caught hold by the present applicant. However, there is similar allegation by the informant as well as the injured witnesses that present applicant has also participated in the incident of assault. Considering the role of the present applicant, admittedly no weapon is assigned to him. No overt act is committed by him. Co-accused Mohasin is already released on bail against whom similar allegations are made. Considering the

same, application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant is released on bail in connection with Crime No.133/2022 registered with Police Station Dhanaj (Bk), District Washim for the offence punishable under Sections 143, 147, 148, 307, 324, 504 read with Section 149 of the Indian Penal Code, on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not leave the jurisdiction of Manglurpir Court without prior permission of the Court.

(iv) The applicant shall submit his mobile/phone number along with his address with address proof, before the trial Court.

(v) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate