



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

CRIMINAL APPLICATION (BA) NO. 401/2023

Gaus Ali @ Raja s/o Waris Ali @ Macchu Ali 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

Mr. D.V.Chauhan, Advocate with Mr. S.P.Bodalkar, Advocate for applicant.
Mr. M.J.Khan, APP for non-applicant/State.

CORAM : M.W. CHANDWANI, J.

DATED : 05/09/2023

1. By this application, the applicant seeks bail in Crime No.119/2013 for offences punishable under Sections 307, 353, 332 read with Section 34 of the Indian Penal Code read with Sections 3, 4 read with Section 34 of the Arms Act. The offence is registered on the allegation that when the police tried to catch the applicant along with other co-accused, they assaulted police by means of fire arms and even one of the co-accused was injured and sustained bullet injury. Ultimately, the police over-powered over one of the co-accused, he was arrested on the spot. Later on, the applicant and co-accused were also arrested.

2. Heard learned counsel for the applicant and learned APP for the respondent/State. I have gone through the charge-sheet.

3. It is the contention of the learned counsel for the applicant that the applicant is in jail since more than 10 years and at a pre-trial stage, the applicant against whom the provisions of Maharashtra Control of Organized Crime Act, 1999 ("MCOC Act" for short) were inflicted, has been acquitted by judgment dated 29th September 2022. According to the learned counsel for the applicant, by applying the provisions of Section 436-A of the Code of Criminal

Procedure (Cr.P.C.), the applicant can be released on bail. He further submits that the injuries sustained to the police personnel are simple in nature. As per Section 57 of the Indian Penal Code, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. The applicant has already undergone half of the sentence of 20 years imprisonment.

4. The learned APP for the State has vehemently opposed the bail on the ground that the applicant has various criminal antecedents and has been charged under the provisions of MCOC Act. The applicant is notorious person and have terror in the locality. He even submits that even fire arms were used in the assault over the police personnel. Therefore, the application for the bail is strongly opposed.

5. The applicant is arrested on 2.7.2013 in this crime and since then, he is in jail. It is now more than 10 years the applicant is behind bars. Section 436-A of the Cr.P.C. prescribes that where a person, during the period of investigation, inquiry or trial of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released on bail. A case is made out under Section 436-A of Cr.P.C. The applicant is entitled to be released on bail. So far as the apprehension of the learned APP put forth, I think stringent conditions can be imposed upon the applicant. Hence, I pass the following order:

ORDER

(i) The applicant - Gaus Ali @ Raja s/o Waris Ali @ Macchu Ali be released on bail on furnishing PR bond of Rs.50,000/- (Fifty thousand) with one surety in the like amount in Crime No.119/2013 registered with Police

Station Nandanvan, Nagpur, for offences punishable under Sections 307, 353, 332 read with Section 34 of the Indian Penal Code read with Sections 3,4 and 25 of the Arms Act..

(ii) The applicant shall, at the time of execution of bond, furnish his address with telephone/mobile number (s) to the Investigating Officer and the Court concerned and shall not change residence without permission of the Court.

(iii) The applicant shall attend the Court on every date and cooperate to complete the trial unless exempted.

(iv) The applicant shall not induce, give threat and pressurize any witnesses, who are connected with the alleged crime.

(v) The applicant shall maintain the law and order.

The application is allowed in the aforesaid terms.

(M.W. CHANDWANI, J.)

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