

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

CRIMINAL APPLICATION (BA) NO. 402/2023

DIPAK @ BANDYA S/O. HARIHAR SAKHARE
VS
STATE OF MAH. THR. HUDKESHWAR PS, DIST. NAGPUR.

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

Court's or Judge's Order

Mr D.N. Mehta, counsel for the applicant.
Mr A.M.Kadukar, APP for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/07/2023.

1. Heard.
2. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 596/2022 registered at Hudkeshwar Police Station for the offences punishable under Sections 143, 147, 148, 302, 307, 323, 504 read with Section 149 of the Indian Penal Code. The applicant is arrested on 29/08/2022 since then he is in jail.
3. The crime is registered on the basis of a report lodged by one Abhilash Munna Nagdeve. On 28/08/2022 on an allegation that on 27/08/2022 at about 7.00 a.m. he had been to Sakkardara and was returning from Sakkardara at about 2.00 p.m.

Thereafter, he called his friend informing him that he will come to meet him at about 5.30. Accordingly, he went to the home of said friend Chetan Chavan at about 6.p.m. At about 7.00 p.m., he came out of the house of his friend, some persons were gathered near the grocery shop namely Gabhane Kirana Stores. There was some hot exchange of words between the said persons and the informant. The said quarrel was rescued by his friend Chetan Chavhan, thereafter he called some of his friends. At the relevant time, there was again quarrel between the persons gathered near the said grocery shop, and the informant and his friends.

In the said quarrel co-accused Choutu Balapure gave a blow of knife on the chest of one Vaibhav Kale. Due to the said blow, Vaibhav Kale has sustained the injuries. He has also received some injuries in the alleged incident. As far as allegations against the present allegation is concerned, it is alleged that the present applicant and the other two accused assaulted there by means of fist and kick blows. On the basis of said report the police have registered the crime against the present applicant and other co-accused.

4. After registration of the crime, the investigating officer has recorded the statements of the eye

witnesses, which also reveals the role attributed is the present applicant that he assaulted the informant by fist and kick blows.

5. As per the contention of the present applicant that merely because he is the friend of another co-accused, he is implicated falsely. In fact, he is not concerned with the alleged offence.

6. It is further contention of the applicant that as far as his role is concerned, no weapon is attributed to him. So his further custody is not required. One of the co-accused namely Nilesh Shingade is already released on bail against whom the allegation was levelled that he caught hold the deceased. Thus, there are no allegations similar to the said Nilesh Shingade and the present applicant is on a better footing. Now, the investigation is completed charge-sheet is filed, and no purpose will be served by keeping him behind bar.

7. The said application is strongly opposed by the State, on the ground that the present applicant by sharing a common object assaulted the deceased as well as the informant. Therefore, the application deserves to be rejected.

8. It is further contention of the State that deceased has sustained the stab injury on a vital part.

Though the investigation is completed, considering that alleged Act is committed in furtherance of common object, bail application deserves to be rejected.

9. Heard learned counsel for the applicant, he reiterated the contention and submitted that one of the co-accused is already released on bail, to whom, the role is attributed that he caught hold of the deceased. The case of the present applicant is on better footing, the only allegation against the present applicant is that he assaulted the informant by fist and kick blows. Now the investigation is completed and the charge sheet is filed, further custody of the applicant has not been required, and prays for a grant of bail.

10. Learned APP reiterated the said contention and objected the application on the ground that all the accused in furtherance of their common object caused the death of the deceased.

11. Having heard by both the sides and on perusal of the investigation papers, it reveals that no weapon is attributed to the present applicant. The statement of the informant as well as eye witness which are recorded during the investigation shows that the only allegation against the present applicant is that he assaulted the informant by fist and kick blows.

12. Admittedly, no weapon is attributed to the present applicant. The co-accused against whom the allegation was that he caught hold of the deceased is already released on bail, admittedly, the serious allegations are against the person, who is already released on bail then the allegation against the present applicant. Therefore, the ground of parity is available to the present applicant. Considering the role attributed to the present applicant, the present application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order;

- a) Criminal Application is allowed.
- b) The applicant is released on bail in connection with Crime No. 596/2022 registered at Hudkeshwar Police Station for the offences punishable under Sections 143, 147, 148, 302, 307, 323, 504 read with Section 149 of the Indian Penal Code, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c) 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.

- d) The applicant shall furnish his cell phone number and address with the address proof.
- e) The applicant shall put his appearance before the trial Court on every date without seeking any examination except in exceptional circumstances.

JUDGE