

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

CRIMINAL APPLICATION (BA) NO. 404/2023

Samadhan s/o Bhagwan More and others 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. Anil Mardikar, Senior Counsel with Mr V.R. Deshpande, counsel for applicants.

Mr. S. Ghodeswar, APP for non-applicant/State.

Mr. A.J. Thakkar, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/07/2023.

1. Heard.

2. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 669/2022 registered with Police Station Buldhana City, Tq. and District Buldhana for the offences punishable under Sections 307, 323, 504 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act. The applicants are arrested on 20/08/2022.

3. The accusations against the present applicants is on the basis of report lodged by Laxman Daulatrao Jadhav, on an allegation that he is residing at Kaikadipura, Buldhana. On 19/08/2022, his cousin father

in law Sanjay Rakhamaji Pawar, his brother-in-law Sunny Sanjay Pawar and his friend Tushar Santosh Patil and father of Santosh Patil had been to the market. At about 9.00 p.m., he was also proceeding towards the market. He witnessed that people are gathered in front of Mahavir Kirana store and therefore, he went there and witnessed that there was assault on the Sanjay Pawar, Tushar Santosh Patil and Sunny Pawar by the present applicants by abusing them. At the relevant time, Samadhan More who is applicant no.1 and Rithesh Bhagwan Khillare No.2 were holding knives in their hands and Pawan Tukarm Jadhav was also holding knife in his hand.

It is alleged that during the scuffle, Samadhan More has given a blow by knife on the thigh of Sunny Pawar, and he has sustained a bleeding injury. The co-accused Vilas Nikam has also given a blow of iron rod on the person of the Sunny. Ritesh Khillare has given a repeated blow on the abdominal portion of Tushar Santosh Patil. Due to which, he sustained the bleeding injury. Sanjay Rakhamaji Pawar was also assaulted by the present applicants and Baban Jadhav has given fist and kick blows on the person of Sanjay Patil and thereafter, he has given blow of knife on the left portion of his abdomen. Due to the said assault, all the injured have sustained the grievous injuries, and they were shifted to the hospital and all the applicants fled away from the spot

of the incident. On the basis of said report, the police have registered the crime against the present applicants.

4. As per the contention of the present applicants they were falsely implicated in the alleged offence. In fact, there was scuffle between them, and the injured persons and they were assaulted by the injured. In the said scuffle, the injured persons have sustained the injures. Now, investigation is completed and charge sheet is filed. As far as the injuries sustained by the injured Sanjay is concerned, he has sustained the simple injury. The injuries sustained by the Sunny is not on the vital part, and the injures sustained by the Tushar, is also not life threatening as all the injured are discharged from the hospital within span of 10 to 15 days. Now, there is no endanger to their life, the injuries sustained by the injured are not life threatening injuries and therefore, Section 307 is not attracted.

5. The said application is strongly opposed by the State as well as the informant on the ground that the applicants Samadhan Bhagwan More and Ritesh Bhagwan Khillare are the habitual offenders. There are criminal antecedents against them. Initially also, there was crime registered against the Samadhan under Section 302 of the Indian Penal Code. In all two offences are previously registered against the said Samadhan, and now, this is the

third offence which is committed by the present applicant. If the present applicants are released on bail, there is every likelihood that they would be involve in similar types of offence. Considering that the injured have sustained the grievous injuries on the vital part of the body, the prayer was made to reject the application.

6. Heard learned Senior Counsel Mr Anil Mardikar for applicant. He submitted that as far as the injuries sustained by the Sanjay is concerned, which is simple injury. The medical certificate shows that he has sustained CLW on left iliac region, which is certified as a non-grievous injury. Immediately, he was discharged from the hospital. He has also invited my attention towards intimation given to the Police, which shows that there was a scuffle between the two groups, and in which the injured have sustained the injury. As far as the injuries of Sunny is concerned, his medical certificate shows that he has sustained the sharper and stab injury, which is grievous in nature, but within ten days he is discharged from the hospital. So, the injuries sustained by the Sunny is also not life threatening injury.

7. He further submitted that the stab injury sustained by Tushar is though on the vital part, but it was not a life threatening injury. He was discharged from the hospital on 30/08/2022. Thus, he was under treatment

for 10 days. He further submitted that the statements of the relevant witnesses are recorded by the investigating officer, which attributes the role of the present applicants. However, considering, now the investigation is completed and charge sheet is filed and further custody of the applicants are not required. As far as the criminal antecedents is concerned, is not sufficient to reject the application of the present applicants for bail.

He submitted that, none of the injury sustained by the life threatening, now investigation is already completed, charge sheet is already filed and no purpose will be served by keeping the present applicants behind bar. In the peculiar facts and circumstances, considering the nature of the injuries sustained, there is no apprehension of death to the injured and investigation is completed, therefore present applicants be released on bail.

8. Learned APP strongly opposed the application on the ground that there are criminal antecedents, as soon as the applicant no.1 released on bail, he has committed another offence. The present applicant No.1 is also involved in a serious crime like, murder in crime No. 672/2022. As soon as he has released on bail in the said crime, he has committed the present crime. Thus, the apprehension raised by the informant that if he is released

on bail, there is every likelihood of involving himself in another crime cannot be ruled out.

9. Leaned counsel Mr Thakkar for the informant has also reiterated the said contention and prays for rejection of the application.

10. Having heard both the sides and on perusal of the investigation papers, it reveals that the incident occurred on 19/08/2022, the eye-witnesses and the statements of the injured shows the involvement of the present applicants in the alleged crime.

As far as the applicant no.3 is concerned, the allegations against him is that, he has assaulted said Sanjay Patil by fist and kick blows and thereafter, given a blow of knife on his abdominal portion towards the left side. The medical certificate of said Sanjay Patil shows that he has sustained the non-grievous injuries and immediately he was discharged from the hospital. The injuries attributed to the applicant Ritesh is concerned, he has given a glow of knife to said Sunny. Admittedly the injury sustained by Sunny is not on the vital part.

The Medical Officer's opinion, nowhere shows that it was a life threatening injury. He was discharged form the hospital. Considering that injury sustained by Sunny is also not a life threatening injury and

investigation is already completed charge-sheet is already filed. Therefore, the prayer of the applicant nos.2 and 3 can be considered for grant of bail. There are no criminal antecedents against them. The alleged incident has taken place in the scuffle, the applicants Samadhan and Ritesh has also sustained the injuries which is in the nature of Trauma. So, it appears that in the scuffle, the present applicants have used the deadly weapons like knife and caused the injuries to the injured persons. The statements of various witnesses also shows the involvement of the present applicants in the alleged offence. Considering that injured persons have already discharged from the hospital and there is no apprehension regarding the death to them. The prayer of grant of bail of applicant Nos. 2 and 3 can be considered, as far as the applicant No.1 is concerned i.e. Samadhan against whom there are criminal antecedents, three offenses are registered against him.

11. Mr Anil Mardikar, learned Senior counsel placed reliance on the order passed in Criminal Application (BA) no. 146/2023, wherein this Court has considered the role of the applicant Samadhan while releasing him on bail, it is held that even where the offences allegedly are grave and serious, and even if there are several criminal cases against the accused, such status by itself cannot be the basis for refusal of bail, unless some cogent evidence

against the persons like applicants of their involvement in the crime which place before the Court.

12. Thus, the applicant No.1 Samadhan is released on bail, as the circumstances in the said crime was showing the involvement on the basis of circumstantial evidence, and no direct evidence is available against the Samadhan. Thus, the criminal antecedents against the present applicants are there shows that, not only in the present crime but he is involved in a serious crime, like the crime under Section 302 of the Indian Penal Code.

13. As far as the contentions raised by the learned APP that after the applicant no.1 was released on bail, he has committed similar type of offence, has no substance as alleged crime was registered prior to registration of the present crime. As observed by this Court, and the circumstances that only because the several criminal cases are pending against the accused, itself is not sufficient to refuse the applicants on bail. However, considering that there are criminal antecedents are against him, stringent conditions requires to impose on the applicant no.1. Considering now investigation is completed and charge-sheet is filed, all the injured persons are already discharged from the hospitals. There is no apprehension of death due to the said injuries. Therefore, prayer of the

present applicants for releasing on bail deserves to be allowed. Considering the applicant's involvement in the various crimes, application for bail deserves to be allowed by imposing certain conditions.

14. In view of the above facts and circumstances, I pass following order;

- a) Criminal application is allowed.
- b) The applicants are released on bail in Crime No. 669/2022 registered with Police Station Buldhana City, Tq. and District Buldhana for the offences punishable under Sections 307, 323, 504 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.
- c) The applicant no.1 shall not enter into the jurisdiction of Buldhana City.
- d) The applicants shall furnish their cell phone numbers and address with address proof to the investigating officer and the applicants shall inform the investigating officer his detailed address, and investigating officer

shall monitor his activities, during pendency of this trial.

- e) The applicants 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.

Criminal application is **disposed of**.

JUDGE