

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

CRIMINAL APPLICATION (BA) NO.428 OF 2023

Rahul Jecab s/o Josef Jecab

Vs.

State of Maharashtra, Through Police Station, Kanhan, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. R. Rawlani, Counsel for applicant.

Mr. I. J. Damle, App for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/06/2023

1. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.710/2022 registered with Police Station, Kanhan for the offence punishable under Sections 302, 353, 307 read with Section 34 of the Indian Penal Code and Section 3/25 of the Arms Act and 135 of the Bombay Police Act. The applicant is arrested on 12.12.2022.

2. The crime is registered on the basis of report lodged by Mahesh Wamanrao Nasare and the accusation against the present applicant is that on 11.12.2022 when the deceased was on patrolling duty in the premises of WCL and the informant and another two security Guards were also on patrolling duty behind the Manager room, at the relevant time present applicant along with

co-accused Samir Siddique were proceeding towards coal depot from the back side of Manger room. It was the restricted area therefore, deceased restrained the present applicant and co-accused Samir Siddique. Thus, deceased was discharging his official duty. At that time present applicant as well as co-accused abused the deceased as deceased has restrained Samir Siddique. Samir Siddique has took out the pistol and shot fired the two bullets towards Milind Khobragade. At the relevant time, present applicant has put his hand and he has sustained injuries. After the said incident, present applicant as well as co-accused ran away from the spot of incident.

3. The present applicant is arrested on the next day of lodging of the report. On the basis of said report, police have registered the crime. As per contention of the present applicant that even taking into consideration the allegation as it is, only the allegation against him is that he abused the deceased. In fact, the prosecution story itself shows that present applicant attempted to restrain the other co-accused from firing the bullet. The present applicant has also sustained the injury in the said incident. Thus, the intention of the present applicant is clear that he was attempting to restrain the co-accused. However, the bullet was fired and applicant has sustained the injury. Now investigation is completed. Considering the role attributed to the present applicant,

the ingredients of the offence punishable under Section 302 are not attributed. Hence, considering the investigation is already completed, charge-sheet is filed. Hence further custodial interrogation is not required. He will be released on bail.

4. The said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present applicant that present applicant and co-accused in furtherance of their common intention were proceedings to the coal depot and they were restrained and co-accused has fired bullet towards the deceased. It is further contention of the State that considering the manner in which the alleged incident has taken place. Admittedly, the present applicant is involved in the incident and merely because he has sustained the injuries, he cannot be released on bail. If he is released on bail, he will tamper the prosecution evidence and prayed for rejection of the application.

5. Heard learned Counsel for the applicant. He reiterated the contentions and submitted that even the recitals of the FIR are taken as it is, it shows that the present applicant has attempted to restrain the co-accused from firing the bullet and in the said incident present applicant has also sustained the injuries. His injury certificate is also on record it shows the intention that he was not sharing the common intention with the

co-accused to fire the bullet towards the deceased. Now investigation is completed and charge-sheet is also filed. The pistol is recovered from the co-accused. Nothing is recovered from the present applicant. No purpose will be served by keeping him behind bar and prayed for releasing the present applicant on bail.

6. Learned APP vehemently submitted that both the applicants came together at the spot of incident it self is sufficient to show their common intention. They came at the spot to proceed towards the coal depot from the back side of the Manager room also sufficiently show their intention of involving themselves in illegal activities. Considering the same, application of the present applicant for releasing him on bail deserves to be rejected.

7. Having heard both the sides and on perusal of the FIR. Admittedly, only allegation against the present applicant is that he has abused the deceased. The recitals of the FIR further shows that co-accused has fired two bullets towards the deceased and present applicant attempted to restrain him by putting his hands and he sustained the injuries. The injury certificate of the present applicant is also on record. The incriminating article Pistol is recovered form the co-accused and nothing is recovered from the present applicant. Though form the recitals of the FIR shows

they both came at the spot of incident together and were proceeding towards the Manager depot, it can be inferred that they came together at the spot of incident and proceeding towards the coal depot. However, the act of the present applicant shows that he has attempted to restrain the co-accused from firing the shots and also sustained the injuries. Nothing is to be recovered from the present applicant. The incriminating articles are recovered from the co-accused. The present applicant is arrested on 12.12.2022. He is in jail more than 6 to 7 months. Investigation is completed. Charge-sheet is filed. Considering his role in the alleged incident his further custody is not required and no purpose will be served by keeping him behind bar. There are no criminal antecedents against him. Considering all these aspects, present application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant Rahul Jecab s/o Josef Jecab is hereby released on bail in connection with Crime No.710/2022 registered with Police Station, Kanhan for the offence punishable under Sections 302, 353, 307 read with Section 34 of the Indian Penal Code and Section 3/25 of the Arms Act and 135 of the Bombay Police Act, on executing PR bond in the sum of Rs.30,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Kanhan Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. till conclusion of the trial.

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

(v) The applicant shall not leave the jurisdiction of Kanhan Police Station without prior permission of the Court.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate