

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.429 OF 2023
Kundan Harishchandra Shirkare 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.

Shri P.V. Navlani, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 19, 2023.

This application is preferred for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.705/2022 registered with Police Station, Frezarpura, Amravati City, District Amravati for the offences punishable under Sections 307, 504, 506(2) read with Section 34 of the Indian Penal Code, 1860. The applicant is arrested on 05.12.2022 and since then he is in jail.

2. The crime is registered against the present applicant on the basis of report lodged by Suraj alias Golu Bharat Chaudhari on an allegation that on 06.11.2022 at about 3.30 pm when he had been to his driving class at Kamal Plaza, his friend Sonu Khanzode met him. Thereafter, he went alongwith him to one wine shop. There occurred a quarrel between them and Bablu Gade. During said quarrel, Bablu Gade has assaulted him by means of a sword. Said Bablu Gade was also accompanied by two persons. On the

basis of said report, police have registered the crime against Nitin alias Bablu Gade and other two unknown persons. During the investigation, the statement of one Anshul Birju Pal was recorded and from his statement the name of the present applicant is revealed. The allegation against the present applicant is that he has assaulted Suraj Chaudhari by means of fist and kick blows. Therefore, crime is registered against him also.

3. As per the contention of the present applicant, the only allegation against him is that he has assaulted the informant by means of fist and kick blows. No weapon is attributed to him. Now investigation is completed and charge-sheet is already filed. Nothing is to be recovered from him. His further custody is not required. As far as the assault by fist and kick blows is concerned, no injuries are sustained by the informant as alleged by him due to the fist and kick blows. Thus, there is no prima facie material against him to connect him with the alleged offence.

4. The said application is strongly opposed by the State on the ground that there are criminal antecedents against the present applicant as total of eight offences are registered against him. If he is released on bail there is every possibility that he would be involved in a similar type of offence and may tamper with the prosecution evidence. It is further contended by State that this offence is committed when the order of externment was passed against the present

applicant and prays for rejection of the application.

5. Heard Shri Navlani, learned counsel for the applicant. He invited my attention to the statement of the witness, which reveals that the only allegation against the present applicant is that he was assaulted by means of fist and kick blows, no weapon is assigned to the present applicant. Nothing is recovered from him. As far as externment order is concerned, he invited the attention towards the entry in the general diary, which shows that though the order of externment is passed it was not served upon the present applicant. As far as criminal antecedents are concerned, learned counsel Shri Navlani submitted that the crimes are registered against the present applicant as he is released on bail for the said crimes. Considering the role of the present applicant in the present case, his further custody is not required and hence he be released on bail.

6. Learned APP strongly opposed the application on the ground that there are criminal antecedents against the present applicant.

7. Having heard both sides and on perusal of the investigation papers, admittedly, the name of the present applicant is not mentioned in the FIR. From the statement of one Anshul Birju Pal the name of the present applicant is revealed as involved in the said crime. The allegation against the present applicant is that he assaulted the informant by

means of fist and kick blows. Admittedly, no weapon is assigned to the present applicant. As far as the externment order is concerned, it was not served upon him on the date of the incident. Considering the allegations in the present case, for a sufficient period the applicant is already behind bars. As far as criminal antecedents are concerned, in the said crimes also he is released on bail. However, considering the criminal antecedents against him, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.
- ii. The applicant – Kundan Harishchandra Shirkare be released on bail in connection with Crime No.705/2022 registered with Police Station, Frezarpura, Amravati City, District Amravati for the offences punishable under Sections 307, 504, 506(2) read with Section 34 of the Indian Penal Code, 1860, on executing PR bond in the sum of ₹25,000/- with one solvent surety in the like amount.
- iii. The applicant shall furnish his cellphone number and address with address proof.
- iv. The applicant shall not tamper the prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the alleged crime.

- v. The applicant shall not indulged in any other crime.
- vi. The applicant shall not enter into the vicinity of Yashodhara Nagar, Frezarpura and shall stay outside Frezarpura area till conclusion of the trial.
- vii. The applicant shall attend Police Station, Frezarpura, Amravati once in a week i.e. on every Sunday between 10.00 am and 02.00 pm till conclusion of the trial.

With this, the application is disposed of.

JUDGE

Wagh