

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

**CRIMINAL APPLICATION (BA) NO.452/2023  
Mohommad Ashique s/o Mohammad Abdul Kadar**

**..VS..**

**State of Mah., thr.the Police Inspector, Police Station Chandur Railway,  
Amravati, District Amravati**

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

Court's or Judge's Order

.....  
Shri V.A.Kilor, Counsel for the Applicant.  
Shri S.M.Ghodeswar, Additional Public Prosecutor for the State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED ON : 20/06/2023**

**PRONOUNCED ON : 26/06/2023**

1. By this application under Section 439 of the Code of Criminal Procedure, the applicant seeks bail in connection with Crime No.499/2022 registered with Chandur Railway Police Station, district Amravati for offences punishable under Sections 302, 143, 147, 148, and 149 of the Indian Penal Code.

2. The applicant is arrested on 23.9.2022 and since then he is in jail.

3. The crime is registered on the basis of report lodged by one Moin Khan Rehman Khan. The informant is the brother of deceased Naeem.

4. As per allegations in the report, deceased Naeem was elder brother of the informant and was not residing along

with him. On 21.9.2022, as deceased Naeem had kidnapped daughter of one Saiyyad Farookh, wife of Saiyyad Farookh lodged report against deceased Naeem and since then he is not traceable. The father of the kidnapped girl was saying that if he finds deceased Naeem in locality, he will kill him. On 23.9.2022, when the informant was at his home, he received a message that his brother, deceased Naeem, is lying in a pool of blood. Though he immediately rushed to the spot, he was informed by her mother that deceased Naeem was referred to the hospital. At the hospital, he came to know that Saiyyad Farookh and Saiyyad Afhroz, who is son of Saiyyad Farookh, have assaulted his brother by means of a sharp weapon and caused his death.

5. On the basis of the report lodged, the police have registered the offence against the applicant along with other co-accused. The applicant is arrested and is in jail.

6. Heard learned counsel Shri V.A.Kilor for the applicant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State.

7. Learned counsel Shri V.A.Kilor for the applicant, submitted that the name of the applicant is not figured in the First Information Report. Subsequently, after three days of the

incident, statements of alleged eyewitnesses were recorded and on the basis of the said statements, the applicant is implicated in the alleged crime. In fact, the applicant is not connected with the alleged crime. The investigation of the crime is completed and chargesheet is filed. Chargesheet is conspicuously silent regarding the delayed statements of two eyewitnesses. As such, learned counsel submitted that as further custodial interrogation of the applicant is not at all required by the investigating agency investigating into the alleged crime, the applicant be released on bail.

8. Learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State, strongly opposed the application on the ground that the statements of eyewitnesses clearly show the involvement of the applicant in the crime. He submitted that the death of the deceased is caused due to the head injury. Thus, *prima facie* material is on record to connect the applicant with the alleged incident. He submitted that the eyewitnesses have attributed the specific role against the applicant and there is *prima facie* material against the applicant. He submitted that if the applicant is released on bail, possibility that the applicant not attending the trial cannot be ruled out. Hence, the application deserves to be rejected.

9. Having heard learned counsel for both parties and perused investigation papers, it transpires that in all seven persons have been alleged to have committed the murder of deceased Naeem. As per the First Information Report, the allegation is levelled only against Saiyyad Farookh and Saiyyad Afhroz, who is son of Saiyyad Farookh, that they have killed deceased Naeem by assaulting by meaning of a sharp weapon.

10. As per learned counsel Shri V.A.Kilor for the applicant, on the basis of statements of alleged eyewitnesses, recorded subsequently after three days of the incident, the applicant is implicated in the alleged crime. Nikhat Bano Naeem Khan and Rizwan Bano Naeem Khan, whose statements were recorded, are first and second wife respectively of deceased Naeem. Their statements were recorded on 26.9.2022. From their statements it reveals that neither they disclosed the incident to the informant nor they witnessed about the incident. It is further submitted that though it is appreciated that different people react differently in a similar situation, even these eyewitnesses have not attempted to remove deceased Naeem in hospital though he was lying in an injured condition, which is highly unacceptable. The role attributed against the applicant along with the other co-accused is that he has assaulted deceased Naeem by means of weapon. However,

postmortem report shows that only one stab injury is sustained by deceased Naeem and other injuries are in the nature of lacerated injuries over left side of eye and abrasions over right side of foot. Though deceased Naeem has sustained stabbed injury on head, it is not corresponded with the internal injury like fracture and only hematoma is seen. Admittedly, the eyewitnesses have disclosed the role of the applicant after three days of the incident. Learned counsel for the applicant has rightly pointed out that the conduct of the eyewitness is not usual as none of eyewitnesses have made a single attempt to save deceased Naeem. If it is accepted that different people act differently in a similar situation, even they have not chosen to remove deceased Naeem to the hospital immediately after the assailants left the spot. While lodging the First Information Report, the informant narrated that the mother of deceased Naeem, who is one of eyewitnesses, had not been to the police station along with the informant. However, she did not disclose the police about involvement of the applicant in the alleged crime.

11. The say filed by the Sub Divisional Police Officer before the trial court, to which my attention is invited by learned counsel for the applicant, indicates that the first person who assaulted deceased Naeem was Deepak Pawar, who

assaulted by means of stone. Deceased Naeem, dodged the stone and attempted to leave the place. Sandeep Shende, by holding an iron rod in his hand, followed deceased Naeem. Other assailants also followed deceased Naeem. At that time, Sajid Seikh picked up a stick and assaulted deceased Naeem on his leg. Sandeep Shende assaulted deceased Naeem on his head by means of an iron rod. Deepak Pawar, Karan Meshram, Saiyyad, and Sanjay assaulted by means of kicks and blows. Mohd. Asif snatched the knife from the hands of deceased Naeem and assaulted him on his ribs. Karan Meshram gave a kick blow on the face of deceased Naeem and, thereafter, assaults left the place. While fleeing away, Mohd.Asif had thrown the knife and Sajid Shaikh had thrown the wooden stick used in the crime. Thus, the name of applicant is not figured in the reply before the trial court.

12. The postmortem report indicates that only one stab injury was sustained by deceased Naeem and the head injury has been caused by Sandip.

13. Thus, from the investigating papers nowhere it reveals that the applicant is the author of any of injuries suffered by deceased Naeem. So also, though the First Information Report is registered on the basis of information

received by the informant from his mother, the name of the applicant is not disclosed. The statement of the eyewitnesses are recorded after three days of the incident and a general statement is made that deceased Naeem is assaulted. However, no specific role is attributed to the applicant.

14. Considering the fact that the investigation is completed; chargesheet is filed; the name of applicant is not figured in the First Information Report, and no role is attributed against applicant, I find that no purpose would be served to keep the applicant behind bars. As such, the applicant can be released on bail, as per order below:

### **ORDER**

(1) The criminal application is **allowed**.

(2) Applicant - Mohommad Ashique s/o Mohammad Abdul Kadar, be released on bail, in connection with Crime No.499/2022 registered with Chandur Railway Police Station, district Amravati for offences punishable under Sections 302, 143, 147, 148, and 149 of the Indian Penal Code, on his execution a P.R.Bond in the sum of Rs.50,000/- with one or two solvent surety of the like amount.

(3) The applicant shall attend the trial court regularly and

cooperate with the trial court for concluding of the trial.

(4) Without prior permission of the trial court, the applicant shall not leave jurisdiction of Amravati City.

(5) The applicant shall not directly or indirectly make any inducement, threat or promise to any of witnesses connecting with the alleged crime.

With this, the criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!