

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

CRIMINAL APPLICATION (BA) NO.459 OF 2023

Chandresh @ Chotu Deshraj Suryawanshi

Vs.

State of Maharashtra through Police Station Officer, Police Station,
Chandrapur (City), Chandrapur

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

Court's or Judge's orders

Mr. R. M. Daga, Advocate for applicant.
Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 26/07/2023

1. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.539/2021 registered with Police Station, Chandrapur (City), District Chandrapur for the offences punishable under Sections 307, 120-B and 201 of the Indian Penal Code and Sections 3 and 25 of the Arms Act. The applicant is arrested on 13.07.2021 and since then he is in jail.

2. The accusation against the present applicant on the basis of report lodged by the mother of the injured namely Vidya Anand Andewar who has alleged that on 12.07.2021 at about 3.00 p.m. when she was proceeding towards her house, she received a phone call that her son was assaulted by somebody and he is in a serious condition. Immediately, she went in the hospital

to meet her son. Her son disclosed to her that when he had been to one Restaurant near Aazad Garden, at that time present applicant and co-accused Mangesh Bawane and some other boys fired bullet towards him in which, he has sustained injury on his back. On the basis of the said report, police have registered the crime against the present applicant.

3. The main ground of the present applicant for releasing him on bail was that since 13.07.2021, he is behind bar. There is no progress in the trial. The next contention of the present applicant is that he is falsely implicated in the alleged offence. The allegation that present applicant has fired bullet towards the injured is not supported by the ballistic expert opinion. Moreover, the injured was discharged from the hospital within five days. There were no life threatening injuries. Now since last two years, he is in jail and as there is no progress in the trial, hence he be released on bail.

4. The said application is strongly opposed by the State on the ground that the applicant has used the deadly weapon like pistol from which the bullet was fired. Even though the ballistic expert opinion is not in favour of the prosecution, however, the statement of the injured is sufficient to level the charges against the present applicant, if the present applicant is released on

bail, he will tamper the prosecution evidence and prays for rejection of the application.

5. Heard learned Counsel Mr. Daga for the applicant. He submitted that even taking into consideration the allegation as it is, which is not supported by the ballistic expert opinion which shows that the bullets which are seized by the police from the spot of incident does not tally those bullets resulted from the test firing. Thus, the ballistic expert opinion is not supporting to the prosecution. He further submitted that as far as the injury sustained by the injured is concerned, which were not life threatening. The injured was discharged from the hospital within five days. Now, the applicant is in jail since last two years, there is no progress in the trial. Though there are criminal antecedents against the present applicant but it would not be hurdle in releasing the present applicant on bail.

6. The learned APP reiterated the contention and submitted that considering the role played by the present applicant, which bail application deserves to be rejected. As far as the ballistic expert opinion is concerned, the statement of the injured is sufficient to level the charges against the present applicant and prays for rejection of the application.

7. Having heard the learned Counsel for the applicant and after going through the investigation papers. The FIR is lodged on the basis of disclosure made by the injured to the mother. The injured was immediately shifted to the hospital. The injury sustained by the injured are punctured wound over back region two in number each size 2 X 1 cm X muscle deep and punctured wound over right hand near wrist joint 2 X 1 cm bone deep. The medical certificate and the discharge card shows that within five days the injured was discharged from the hospital. Thus, the injury sustained by the injured was not life threatening injuries. As far as the investigation part is concerned, it is already over and charge-sheet is filed. Admittedly, the ballistic expert opinion is not in consonance with the allegation made against the present applicant, however, the admissibility of the said ballistic expert opinion whether it corroborates the case of the prosecution or not is a matter of trial. At that stage, the applicant is behind bar since last two years. There is no much progress in the trial as charges are not framed. Considering the injury sustained by the injured are not life threatening injury. No purpose will be served by keeping the applicant behind bar as he is already behind bar for sufficient period. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

- (i) The application is allowed.
- (ii) The applicant **Chandresh @ Chotu Deshraj Suryawanshi** is released on bail in connection with Crime No.539/2021 registered with Police Station, Chandrapur (City), District Chandrapur for the offences punishable under Sections 307, 120-B and 201 of the Indian Penal Code and Sections 3 and 25 of the Arms Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter in the jurisdiction of Chandrapur District, except for attending the dates in the trial Court.
- (iv) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.
- (v) The applicant shall furnish his cell phone number and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate