

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

CRIMINAL APPLICATION (BA) NO.488 OF 2023

Subhash s/o Yashwant Gedam

Vs.

State of Maharashtra through PSO Kalmana Police Station, Nagpur

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

Court's or Judge's orders

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

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/07/2023

1. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.488 of 2022 registered with Police Station, Kalmana, Nagpur, District Nagpur for the offence punishable under Sections 307, 452, 458, 120-B read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act. The applicant is arrested on 24.08.2022 and since then he is behind bar.

2. The accusation against the present applicant is that the crime is registered on the basis of report lodged by Mahesh Babanrao Wadhie on an allegation that on 22.08.2022, he was sleeping in the house and some unknown persons entered his house and gave a blow on his back. He shouted for help but said persons fled away from the spot. His wife woke up and she removed him in the hospital. On the basis of said report, police have registered the offence against the unknown

persons. During the investigation, the involvement of the other co-accused is revealed. As per the prosecution, during interrogation with the other co-accused, the name of the present applicant is reflected and therefore, he arrested.

3. As per the contention of the present applicant, there is no direct or circumstantial evidence to connect him with the alleged offence. From the investigation papers, the Investigating Officer has not collected any material to show his involvement in conspiracy. He is already behind bar since 24.08.2022. Now, the investigation is completed and chargesheet is filed. Considering the material collected by the investigating agency against him, his further custody is not required and hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that the offence is serious in nature. The applicant has hatched the conspiracy with the co-accused and with intention to eliminate the injured, the co-accused has given a blow on the back of the injured. The injured has sustained the grievous injury. Thus, considering the gravity of the offence, the application for bail deserves to be rejected.

5. Heard learned Counsel Mr. Tiwari, for the applicant. He invited my attention towards the various statements recorded by the investigating agency during

the investigation and submitted that there is absolutely no statement or any material to connect the present applicant with the alleged offence. Only one general diary entry is recorded by the Investigating Officer which shows that during interrogation with the co-accused, the name of the present applicant is revealed. Thus, the involvement of the present applicant is on the basis of the statement of the co-accused. Except that statement, nothing is on record to connect the present applicant with the alleged offence.

6. Per contra, learned APP submitted that the informant was assaulted when he was in his house and sleeping. As far as the investigation is concerned, there is material collected by the Investigation Officer to connect the present applicant which shows that the present applicant was part of the conspiracy and therefore, the application for bail deserves to be rejected.

7. Having heard both the sides and on perusal of the investigation papers. I have not come across a single statement which shows the involvement of the present applicant, on the basis of any statement recorded by the Investigating Officer which shows the involvement of the present applicant. The Investigating agency relied upon the statement of the co-accused and to that respect only one entry in the case diary is recorded, except the above material there is absolutely nothing on record to show the involvement of the present applicant with the

alleged offence. Considering the nature of the evidence collected by the Investigating Officer against the present applicant, the present applicant is behind bar for a sufficient period. No purpose will be served by keeping the present applicant behind bar, in view of that application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Subhash s/o Yashwant Gedam** is released on bail in connection with Crime No. 488 of 2022 registered with Police Station, Kalmana, Nagpur, District Nagpur, for the offences punishable under Sections 307, 452, 458 and 120-B read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police 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 induce, threat or promise any witnesses who are connected with the alleged crime.
- (iv) The applicant shall furnish his cell phone number and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)