

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

CRIMINAL APPLICATION (BA) NO.491 OF 2023

Sandip s/o Vijay Pendor

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station, Arni, District
Yavatmal

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

Court's or Judge's orders

Mr. S. I. Ghatte, Counsel with Mr. M. J. Shaikh, Counsel with Mr. N. Tikar, 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.273/2022 registered with Police Station, Arni, District Yavatmal, for the offence punishable under Sections 302, 307, 504, 506, 143, 148 read with Section 149 of the Indian Penal Code and Sections 4, 25 and 27 of the Arms Act.

2. The accusation against the present applicant is on the basis of report lodged by the informant on an allegation that his brother Atish and others were celebrating Holi Festival. At that time, co-accused Rohan Soyam and Chandan Soyam and unknown persons joined them. The friends of the informant and other

villagers restrained them from joining in their group. Thereafter, there was a quarrel between the informant and friends on one side and Rohan and his friends on other side. Rohan and his friends left the spot, however, they returned back after a short span of time. It is further alleged by the informant that Rohan, Chandan and two others returned back with the weapons in their hand. Two unknown persons caught hold Atish and the Chandan inflicted knife blows on the chest and thereafter they all fled away.

3. The applicant is arrested on 19.03.2022. As per his contention only role attributed to him is that he caught hold the hands and legs of the deceased. In fact, his name is not mentioned in the FIR. There are two stories narrated by the informant. The supplementary statements are recorded after five days and thereafter, the name of the present applicant is revealed. The co-accused who assaulted the deceased is also released on bail by this Court. The case of the present applicant is on better footing. He is entitled to be released on bail on the ground of parity.

4. The said application is strongly opposed by the State on the ground that as present applicant and another co-accused caught hold the hands and legs of the deceased. The other co-accused was able to give a knife blow on the chest of the deceased. Thus, the blow on

chest was given on the vital part which caused the death of the deceased. The applicant along with other co-accused shared common intention and in furtherance of their common intention they have committed the said offence. Considering the role attributed to the present applicant, his application deserves to be rejected.

5. Heard learned counsel for the applicant. He reiterated the contentions that initially there was no role attributed to the present applicant. After five days the witnesses have stated about the role of the present applicant. The co-accused who has assaulted the deceased is released on bail. The only allegation against the present applicant is that he caught hold the hands and legs of the deceased. Considering that, the person against whom the allegations are of serious nature is released on bail. The present applicant is entitled to be released on the ground of parity. In support of his contention he placed reliance on the decision of this Court in **Ramkrushna @ Rajju Vs. The State of Maharashtra and Ors., Criminal Appeal No.873/2022** decided on 06.02.2023, wherein this Court has considered that the role assigned to the appellant prima facie appears to be of mere presence on the spot. Right from the first informant report, it has been consistently stated that co-accused Umesh has dealt knife blow and there was only one stab injury on the person of the deceased. In the light of role of the appellant, the

appellant was released on bail in the said decision. Here in the present case also admittedly the name of the present applicant is not mentioned in the FIR. During investigation, the name of the present applicant was revealed and only role attributed to the present applicant is that he caught hold the hands and legs of the deceased. This Court has considered the investigation material, collected during the investigation while deciding the bail application of co-accused Khushal Vijay Shinde against whom the allegation was that he assaulted the deceased along with the co-accused. Considering the role is attributed to the present applicant, and the allegations with the serious nature against the co-accused is already released on bail, the present applicant is also entitled to be released on bail on the ground of parity. I do not find any substance in the submissions of learned APP that, the applicant has participated and played vital role. Firstly, the informant in the FIR and the witnesses in their statement initially only stated the role of unknown persons. Subsequently, the name of present applicant is revealed and the role attributed to the present applicant is that he caught hold the hands and legs of the deceased. Considering the aspect that the co-accused against whom serious allegations were made of the assault on the deceased is released on bail, present applicant is also to be released on bail on the ground of parity. Moreover, the applicant is behind on bar since 19.03.2022. The charge-sheet has

been filed and the charge has not yet been framed. Considering this aspects, the further custody of the present applicant is not required. No purpose will be served by keeping him behind the bar.

6. Needless to mention that the observations made herein above are for the purpose of deciding the bail application. Accordingly, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant Sandip Vijay Pendor is hereby released on bail in connection with Crime No.273/2022 registered with Police Station, Arni, District Yavatmal for the offence punishable under Sections 302, 307, 504, 506, 143, 148 read with Section 149 of the Indian Penal Code and Sections 4, 25 and 27 of the Arms Act, on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall submit his mobile/phone number, along with his address with address proof, before the trial Court. Additionally, the applicant shall submit the names of his two nearest relatives along with their address with address proof.

(iv) The applicant shall regularly attend the Court and cooperate to conclude the trial.

(6)

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

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate