

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

CRIMINAL APPLICATION (BA) NO.587 OF 2023

(Himanshu s/o Dinesh Roy Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.D. Kalra, Advocate for the applicant.
Shri A.M. Kadukar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 31, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.135/2022 registered at police station Imamwada, Nagpur for the offence punishable under Sections 307, 384 read with Section 34 of the Indian Penal Code and Section 4 and 25 of the Arms Act, 1959 and Section 142 of the Maharashtra Police Act, 1951.

3. The applicant is arrested on 22/04/2022 and since then he is in jail.

4. The accusation against the present applicant is on the basis of report lodged by one Bhupendra Horilal Pali on an allegation that on 21/04/2022 at about 9.00 to 9.30 p.m. when he was sitting near Shitla Mata Mandir at that time the co-accused and present applicant came there on the Aactiva scooter and co-accused demanded the amount of Rs.4000/- and on his denial he gave a blow of knife on his abdominal portion. At the relevant time

present applicant was holding the injured. On the basis of said report, police have registered the crime against the present applicant.

5. As per the contention of the present applicant he is implicated merely because he was along with the co-accused. No specific role is attributed to him. Now investigation is completed and charge-sheet is filed. His further custody is not required. He will abide by all the conditions imposed by this Court.

6. Said application is strongly opposed by the State that the present applicant was sharing the common intention with the co-accused and in furtherance of their common intention, co-accused has given a blow of knife on the abdominal portion of the injured and caused him injuries. The injured has sustained three injuries on his abdominal portion. Though investigation is completed but considering the criminal antecedents against the present applicant, if he is released on bail he will tamper with the prosecution witnesses and will involve in the similar type of offence.

7. Heard learned Counsel for the applicant. He reiterated the contention and submitted that now since the date of arrest, present applicant is behind bar. Merely because criminal antecedents are there, his bail application cannot be rejected. He further submitted that the injuries are not attributed to the present applicant. Now, the investigation is completed and charge-sheet is filed. In view of that he be released on bail.

8. Learned Additional Public Prosecutor reiterated the contentions and submitted that considering the criminal antecedents against the present applicant, bail application deserves to be rejected. Moreover, the *prima facie* material against the present applicant to show the involvement. In view of that prays for rejection of the application.

9. Having heard both the sides and on perusal of the investigation papers, it reveals that though name of the present applicant is not mentioned in the FIR but his involvement is revealed from the statements of the eye-witnesses. Admittedly, the role of giving blow is not attributed to the present applicant however, it is alleged and substantiated by the eye-witnesses that when the blow was given, present applicant has caught hold the injured. The injured has sustained the injuries. Thus, there is a *prima facie* material against the present applicant to show the involvement. Whether the applicant was having knowledge that the co-accused is having knife along with him and he is supposed to give blow is a matter of evidence.

10. At this stage, the role of the present applicant is reflected from the statements of the eye-witnesses. However, considering that the investigation is completed and charge-sheet is filed and the applicant is behind bar since the date of arrest, no role is attributed to him to show that he was either possessing any weapon or given any blow to the injured. His prayer for the bail can be

considered. As far as the criminal antecedents are concerned merely because there are criminal antecedents, the application of bail cannot be rejected. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant - Himanshu s/o Dinesh Roy in Crime No.135/2022 registered at police station Imamwada, Nagpur for the offence punishable under Sections 307, 384 read with Section 34 of the Indian Penal Code and Section 4 and 25 of the Arms Act, 1959 and Section 142 of the Maharashtra Police Act, 1951, be released on bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iii) The applicant shall not enter into the jurisdiction of Imamwada police station, Nagpur, till conclusion of trial.
- (iv) The applicant shall attend concerned Police Station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and the Police Inspector of Imamwada, Nagpur police station shall supervise the activities of the present applicant.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vi) The applicant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*