

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

CRIMINAL APPLICATION (BA) NO.598 OF 2023
Ballusingh s/o Bablusingh Bhada Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri A.S. Shukla, Advocate for applicant.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : AUGUST 09, 2023.

The present applicant is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.02/2022 registered with Police Station, Deoli, District Wardha for the offence punishable under Sections 201, 294, 302, 506 read with Section 34 of the Indian Penal Code. The applicant is arrested on 02.01.2022 and since then he is in jail.

2. The accusation against the present applicant is that at the time of the alleged incident, the informant was the present applicant along with the deceased at the pan stall. At that time, the present applicant along with the other two accused came there to have eggs from the egg stall from one Ganesh Tryambak, which is just adjacent to the pan stall. There was a hot exchange between the present applicant and other co-accused and said Ganesh Tryambak overpayment of money. Thereafter, they were asked to leave the place by the other stall owner. Due to this, the co-

accused got annoyed and gave a blow of gupti (drager) on the chest of the deceased, who is the pan stall owner. It is alleged that, at the relevant time, the present applicant was also holding a knife in his hand and he took out the knife. After some time, the co-accused are arrested as they are caught by the residents of the same locality. On the basis of said report, the police have registered the crime against the applicant.

3. As per the contention of the present applicant, the alleged incident occurred in a sudden fight and a sudden quarrel. There was no intention to commit murder of the deceased, whatever happened is in hit of passion and therefore exception under Section 4 of the IPC is attracted. It is further contention of the learned counsel for the applicant that even taking into consideration the prosecution case as it is no specific role is attributed to the present applicant, the only role attributed is that the present applicant was present at the spot along with the knife in his hand. As no overt act has been committed by the present applicant, now the investigation is completed and charge-sheet is filed, the applicant be released on bail.

4. The said application is strongly opposed by the learned APP for State on the ground that all the accused persons came at the spot of the incident and they were possessing deadly weapons along with them. In furtherance of common intention, the co-accused has given a blow on

the vital part of the body i.e. on the chest. Though the investigation is completed there is a likelihood of fleeing away of the present applicant and would not be available for the trial and the trial would be held up due to his absence. In view of that, the application deserves to be rejected.

5. Heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. From the investigation papers, it reveals that the present applicant and other co-accused arrived at the egg stall (spot) to eat egg and there was some hot altercation between the egg stall owner as well as other adjacent stall owners and the present applicant. In the said hit of passion, the co-accused took out the gupti (drager) and gave a blow on the chest of the deceased. As far as the role of the present applicant is concerned, though he was holding a weapon like knife but he has not caused any injury to anybody and left the place along with the co-accused. Considering the role of the present applicant, as he has not caused any injury to the deceased or any other prosecution witnesses, the only role attributed to the present applicant is that he was present along with the co-accused. Now the investigation is completed and charge-sheet is already filed. As far as the apprehension raised by the prosecution is concerned, some conditions can be imposed on the present applicant. In view of that, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.

ii. The applicant – Ballusingh s/o Bablusingh Bhada be released on bail in connection with Crime No.02/2022 registered with Police Station, Deoli, District Wardha for the offence punishable under Sections 201, 294, 302, 506 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of ₹25,000/- with one surety in the like amount.

iii. The applicant shall attend concerned police station once in a month i.e. on every second Sunday of the month and the investigating officer shall record his presence.

iv. The applicant shall also attend the trial Court on every dates.

v. The applicant shall furnish the cellphone number and address with address proof. In addition, the applicant shall also furnish the names of his two relatives and their address with address proof.

vi. The applicant shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

With this, the application is disposed of.

JUDGE

Wagh

Signature Not Verified

Digitally Signed By: SURESH RAOSAHEB
WAGH
Personal Assistant to Hon'ble
Judge, High Court of Bombay, Nagpur
Bench, Nagpur.
Signing Date: 10.08.2023