

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

CRIMINAL APPLICATION (BA) NO. 599/2023

Samir Ali s/o Sabir Ali V/s 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

Mr. C.R.Thakur, counsel for applicant.

Mr. I.J.Damle, APP for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/07/2023.

1. Heard.
2. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 125/2023 registered with Police Station Tahsil, District Nagpur, for the offences punishable under Sections 143, 147, 148, 302, read with Section 149 of the Indian Penal Code. The applicant arrested on 09/02/2023.
3. The accusations against the present applicant is that on 08/02/2023 at about 1 a.m. at night at Agrasen Square, Nagpur. When the informant namely Kalim Sheikh and his friend deceased Parvez Sheikh Papamiya were chit chatting with each other, the accused persons came there and the co-accused

namely Yusuf Khan @ Parvez Yakub Khan gave a blow of knife on the neck of the deceased. Meanwhile, the present applicant and other co-accused also gave a blow of knife on the person of the deceased, which resulted into the death of the deceased. On the basis of said report, Police have registered the crime against the present applicant.

4. As per the contention of the present applicant since the date of arrest i.e. from 09/02/2023 he is behind bar. Now, the investigation is completed and charge-sheet is filed. As far as the allegation is concerned, he is not named in the FIR. During the investigation, the statements of the eye-witness are recorded, however, no role is attributed to him, even he is not identified during the Test Identification Parade by the eye-witness - Suraj Krupashankar Yadav and the other eye-witness is not called for identification parade. Thus, there is no prima-facie material against the present applicant to connect him with the alleged offence. Now, the investigation is completed and charge-sheet is filed, he prayed for bail.

5. The said application is strongly opposed by the State on the ground that the present applicant along with the co-accused have hatched a criminal

conspiracy to eliminate the deceased, and in furtherance of their common object, they have assaulted the deceased by causing his death. During the investigation, the investigating officer has recorded the statement of the relevant witnesses, who have witnessed the incident, which shows the role played by the present applicant. Thus, prima facie incriminating material is available against the present applicant and prays for rejection of the application.

6. Heard learned counsel Mr C.R. Thakur for the applicant. He reiterated the contentions and submitted that as far as the role of the present applicant is concerned, eye-witness Suraj Krupashankar Yadav, though named the present applicant as assailant but he has not identified the present applicant, during the test identification parade. Even his statement is nowhere discloses the specific role of the present applicant, his statement was also recorded under Section 164 of the Code of Criminal Procedure. In the said statement, he has not whispered about the involvement of the present applicant in the alleged crime. Another eye-witness namely Ashpak Shaikh @ Shaikh Issak has not attributed any role to the present applicant and he was not called for the test identification parade. Thus, after going through the entire investigation papers,

except the CDR report, there is no material against the present applicant to connect him with the alleged offence. Considering the same, the applicant be released on bail.

7. Learned APP strongly opposed the application on the ground that the deceased have sustained total 41 injuries on his person. Death of the deceased is also due to multiple injuries. Though the name of the present applicant is not mentioned in the FIR but the statement of the eye-witnesses discloses the role of the present applicant especially Suraj Krupashankar Yadav. There was continuous communication between the present applicant and other co-accused which sufficiently shows that the applicant was part of criminal conspiracy. In view that, application deserves to be rejected.

8. Having heard both the sides and on perusal of the investigation papers, the crime is registered on the basis of report lodged by one Kalim Shaikh @ Karim Shaikh, who is the eye-witness of the said incident. In the FIR, the name of the present applicant is not mentioned as an assailant. Initially, the FIR is registered against the co-accused namely Yusuf Khan @ Parvez Yakub Khan. The entire allegation in the FIR is against this co-accused alleging

that, due to the previous enmity, he has given the knife blows on the person of the deceased and caused him death. During investigation, the statements of the eye-witnesses are recorded including Suraj Krupashankar Yadav and Ashpak Sheikh @ Sheikh Isak. Though said Suraj Krupashankar Yadav has shown the presence of the present applicant with co-accused, however, no specific role is attributed by him to the present applicant. His statement under Section 164 is also recorded wherein he is not attributed role to any of the accused. During test identification parade, the said witness Suraj Krupashankar Yadav has not identified the present applicant as an assailant. The prosecution relied upon another witness namely Ashpak Sheikh @ Sheikh Isak, who has allegedly witness the said incident, though he stated that the co-accused Yusuf Khan @ Parvez Yakub Khan and his four associates have committed the murder of deceased. However, he has not named the present applicant in the alleged offence. Surprisingly, he was not called for the test identification parade. The only incriminating material against the present applicant is that the CDR Reports. On the basis of the said CDR reports, the learned APP submitted that the applicant was a part of criminal conspiracy, all the accused persons hatched the criminal conspiracy to eliminate

the deceased. However, beside this CDR reports, nothing is brought on record during investigation to show that this telephonic communication is only for hatching the criminal conspiracy. Admittedly, direct evidence would not be available for the conspiracy, however, some material is to be required to ascertain that the present applicant was part of the criminal conspiracy.

9. Moreover, from the investigation papers, there is no material to show that the present applicant hatched the criminal conspiracy along with the accused and thereby committed an offence under Section 120-b of the Indian Penal Code. Considering the entire material collected during the investigation, except the statement of one eye-witness Suraj Kruprashankar Yadav, who has only narrated the presence of the applicant along with co-accused, no other material is placed on record to connect the present applicant with the alleged offence.

10. In view of that, present applicant has made out the case to grant him bail. However, considering the gravity of the offence, some conditions deserves to be imposed on the present applicant. In view of that, I proceed to pass following order:

- a. Criminal application is allowed.
- b. Applicant - Samir Ali s/o Sabir Ali, be released on bail, in Crime No. 125/2023 registered with Police Station Tahsil, District Nagpur, for the offences punishable under Sections 143, 147, 148, 302, read with Section 149 of the Indian Penal Code, on furnishing PR. Bond in the sum of 25,000/- with one solvent sureties of the like amount.
- c. The applicant shall not enter into the jurisdiction of Tahsil Police Station, Dist. Nagpur.
- d. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- e. The applicant shall attend the trial Court regularly and shall co-operate to dispose the trial at the earliest
- f. The applicant shall furnish his cell phone number and address with address proof.

Criminal Application is **disposed of**.

JUDGE