



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

CRIMINAL APPLICATION (BA) NO. 654 OF 2023

Mukimoddin Fafiyoddin

.Vs.

State of Maharashtra, Through PSO, PS Pusad Gramin, Yavatmal

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

Mr A. S. Manohar, Advocate for the applicant
Mr Ashish Kadukar APP for the State

CORAM : G.A. SANAP, J.

DATE : OCTOBER 18, 2023

1. Heard finally.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 made by the Applicant/accused No.1 seeking bail in Crime bearing No. 540 of 2021 registered at Pusad Gramin Police Station, Yavatmal for the offences punishable under Sections 143, 147, 148, 149, 188, 323, 307, 302, 504 read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and under Section 135 of the Maharashtra Police Act.

3. Learned Advocate for the applicant/accused No.1 submitted that on the report of the applicant/

accused No.1 and on the basis of his statement recorded, when he was admitted in the hospital, a crime was registered against the seven accused including the informant. It is stated that in the first information report no specific role has been attributed to accused No.1 in the actual assault, by any weapon. Learned Advocate took me through the report and pointed out that simple injury was sustained by the informant which has been reflected in the medical certificate issued from the Government Hospital. Learned Advocate took me through the first information report registered on the report of the applicant/accused No.1 and pointed out that when the applicant had questioned Vickky Rathod as to why he was teasing the girls going to the school, the informant and Vickky Rathod felt aggrieved. He has pointed out that Vicky Rathod had executed bond for not repeating such act in future. Learned Advocate submitted that considering the involvement of the accused shown from the record, his further detention is not warranted. Learned Advocate submitted that he was arrested on 06.12.2021. Learned Advocate submitted that considering the material available on record and the fact that in the first information report no specific role was attributed to him with regard to use of any weapon in

assault, he may be released on bail.

4. Learned APP submitted that applicant/accused No.1 was the main reason behind the incident. Learned APP pointed out that when the applicant/accused No.1 was proceeding on his motor cycle he gave cut to the motor cycle of informant because of their previous dispute. On being questioned by Laxman Rathod, the accused No.1 left the said place and after some time come with the remaining accused and assaulted them. Learned APP pointed out that when the elder brother of the informant came on the scene to intervene in the quarrel one of the accused stabbed him with sword in his stomach and as a result thereof, he died on the way to the hospital. Learned APP submitted that considering the serious nature of the crime and the evidence compiled in the charge-sheet specifying the role of the applicant/accused No.1 this is not a fit case to enlarge the applicant/accused No.1 on bail.

5. The charge sheet has been filed. The charge is framed. It is seen that as such the case is ready for recording the evidence. Learned Advocate on the basis of the role attributed to accused No.1 in the first

information report tried to make good his submission that he deserves bail in the crime. Laxman was injured in this case. It appears that his medical certificate issued from the Government Hospital does not support his contention that he had sustained multiple stab injuries. It is also not the case of prosecution that Laxman was admitted in the hospital. In the supplementary statement of the informant, he has attributed some role to the accused No.1 in inflicting the blows with knife. At this stage, for the purpose of deciding bail application, the merits and credibility of the evidence cannot be looked into. The Court has to consider the role played by accused No.1 in this crime. It is undisputed that the accused No.1 was admitted in the Government Hospital at Yavatmal. He had sustained injury to his head. His statement was recorded by the police when he was admitted in the hospital. In his statement, he has narrated the incident occurred on the date. After considering the material on record and the role attributed to him in the FIR and the nature of the incident narrated by him in his statement recorded by the police, I am of the view that the bail cannot be denied to this accused. The accused has been in jail since 06/12/2021. It is true that the remaining accused arrayed in the case with

accused No.1 had not sustained injury in the incident reported by accused No.1. Therefore, the role of applicant/accused No.1 is different from the remaining accused. In the facts and circumstances, I am inclined to grant application. Accordingly, I pass the following order:

- i) The Criminal application is allowed.
- ii) Applicant - Mukimoddin Fafiyoddin be released on bail in Crime No.540 of 2021, registered at Pusad Gramin Police Station, Yavatmal on his furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with solvent surety in the like amount before the trial Court.
- iii] The applicant shall not in any way tamper with the prosecution evidence.
- iv] The applicant shall not pressurize or threaten the prosecution witnesses.
- v] The applicant shall co-operate the learned trial judge in the conduct of the trial.

6. The Criminal Application stands **disposed of** accordingly.

(G. A. SANAP, J.)