



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

CRIMINAL APPLICATION (BA) NO. 691 OF 2023

Sk. Noor Sk. Shakardi alias Shakarji

Vs.

State of Maharashtra, Thru. Police Inspector, PS Amdapur, Tal. Chikhali, District – Buldhana.

Office notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders.

Mr. A.S. Pande, Advocate a/w Mr. A.D. Raut, Advocate for
applicant.

Mr. A.M. Kadukar, APP for non-applicant/State.

CORAM : G.A. SANAP, J.

DATE : OCTOBER 19, 2023.

Heard.

2. The applicant who is accused No.2 in Crime No.153/2022 registered at Amdapur Police Station, Tal. Chikhali, District – Buldhana, for the offence punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and later on added Sections 302, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, 1951, has made this application for bail under Section 439 of the Code of Criminal Procedure.

3. Learned Advocate submitted that the out of five accused except the accused/applicant No.2, the

remaining accused have been released on bail. Learned Advocate pointed out that there is variance between the statement of the informant in his report and the statement recorded under Section 161 of the Code of Criminal Procedure with regard to the actual assailant of the deceased. It is pointed out that in the report it was stated that the accused No.2 had inflicted blow with iron rod on the head of the deceased, whereas in the statement recorded under Section 161 of the Code of Criminal Procedure, it was stated that the blow with iron pipe was inflicted by the wife of the accused No.2 Najranabee, who has already been released on bail. Learned Advocate further pointed out that the iron rod was recovered at the instance of Najranabee accused No.1. Learned Advocate submitted that considering the nature of the role in the crime attributed to accused No.2, on the ground of parity with remaining accused, the applicant be released on bail.

4. Learned APP submitted that the ground of parity is not available to the accused No.2, inasmuch as the role played by accused No.2 is more serious. Learned APP in all fairness submitted that while recording the statement of the informant under Section 161 of the Code of Criminal Procedure, he has stated that due to mistake it was stated that the blow with rod was inflicted by the accused No.2. Learned APP submitted that simply because of this the bail cannot be granted to the accused.

Learned APP submitted that considering serious nature of crime and the possibility of tampering with the prosecution evidence bail cannot be granted.

5. It is seen on perusal of the record that there was no specific motive as such for commission of crime. It is seen on perusal of record that the accused persons had gathered on the road in front of the house of the informant and they were hurting abuses. It is not the case of the informant that they were hurting abuses at him and his family members. It is stated by the informant that the accused told them to go to their house and do whatever they wanted to do in front of their house and therefore, the accused got annoyed and assaulted them. It is seen on perusal of the report that the main role has been attributed in the assault with iron pipe to accused No.1 Najranabee. The iron pipe was recorded at her instance. A perusal of the supplementary statement of the informant and the statement of the other witnesses would show that the major role in the assault on the deceased has been attributed to accused No.1 Najranabee. It is further seen that the role similar to the one attributed to the accused No.2 has been attributed to the remaining accused. These accused have been released on bail. In my view, considering the nature of the role attributed to the accused and the fact that despite filing of the charge-sheet the charge has not been framed. In my view, in this case

further incarceration of accused No.2 would not be necessary. In this case, the ground of parity is available to the accused No.2. No reason has been stated in the reply to deny parity. The apprehension put forth by the prosecution can be taken care of by imposing appropriate conditions. As such, I proceed to pass the following order:

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant- Sk. Noor Sk. Shakardi alias Shakarji be released on bail in Crime No.153 of 2022, registered with Police Station Amdapur, Tal. Chikhali, District: Buldhana, for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and later on added Sections 302, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, 1951, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount.
- (iii) The applicant shall not in any way tamper with the prosecution evidence.

(iv) The applicant shall not pressurize or threaten the prosecution witnesses.

6. The application stands disposed of.

(G.A. SANAP, J.)