



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

CRIMINAL APPLICATION (BA) NO.848 OF 2023

(Mohammad Asif @ Ghoda s/o Mohammad Yusuf Vs. The 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. Avinash A. Gupta, Senior Advocate a/w Mr. A.A. Gupta, Advocate for the
applicant.
Ms. D. Charlewar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 05, 2023.

Heard learned Counsel for the applicant
through Video Conferencing.

2. By this application, the applicant is seeking
bail under Section 439 of the Code of Criminal Procedure
in connection with Crime No.01/2023, registered with
Police Station Sakkardara, Nagpur for the offence
punishable under Sections 302 and 120(B) read with
Section 34 of the Indian Penal Code.

3. The applicant is arrested on 05/01/2023.
Since then he is in jail.

4. Learned Senior Counsel Mr. Gupta for the
applicant submitted that the accusation against the
present applicant is on the basis of report lodged by
Sheikh Iqbal Sheikh Moinuddin on an allegation that on
03/01/2023 the informant went to the Pan shop of his
brother i.e. deceased and from that place deceased went
to a cobbler shop for repairing his footwear. At the

relevant time, all of a sudden the co-accused Sheikh Shakib Sheikh Sharik and Sheikh Faiz Sheikh Firoz arrived at the spot and assaulted the deceased by means of knife and fled away from the spot of incident. It is alleged that the present applicant hatched the conspiracy as there was a previous dispute between the deceased and the present applicant and with the help of the co-accused killed the deceased by assaulting him by means of deadly weapons.

5. Learned Senior Counsel for the applicant submitted that for attracting the offence under Section 120(B) of the IPC against the present applicant, the Investigating Officer has not collected any material except the CDR reports which shows that on the day of incident, the co-accused Sheikh Shakib Sheikh Sharik has called on the mobile phone of the wife of the present applicant. Besides this piece of evidence, no other material is on record. He submitted that admittedly the co-accused Sheikh Shakib Sheikh Sharik is the relative of the present applicant. The relation between the present applicant and the co-accused is uncle and nephew, therefore, the call between the two is not unnatural. As far as the investigation part is concerned, it is already completed and charge-sheet is filed. There is no single witness to show that either there was any meeting of mind prior to the incident or at any place there is a communication between the present applicant and co-accused Sheikh Shakib Sheikh Sharik, therefore, absolutely there is no material to connect the present applicant with the alleged

offence. Admittedly, he was not present at the spot of incident. In view of that considering now the investigation is completed and the charge-sheet is filed, no purpose would be served by keeping the present applicant behind bar, he be released on bail.

6. Learned Additional Public Prosecutor strongly opposed the application on the ground that there was previous dispute between the present applicant and the family of the informant. She submitted that present applicant is the main conspirator and the co-accused have executed the act. The CDR reports, statement of the informant sufficiently shows the involvement of the present applicant in the alleged offence. If applicant is released on bail he will tamper with the prosecution evidence.

7. Having heard learned Senior Counsel for the applicant and learned Additional Public Prosecutor for the State. Perused the investigation papers. There is no dispute as far as the relationship between the co-accused, Sheikh Shakib Sheikh Sharik and the present applicant is concerned. Present applicant is the maternal uncle of the co-accused Sheikh Shakib Sheikh Sharik. The co-accused had been to the house of the present applicant to drop the mother of the present applicant. Except this fact, there was no connection as far as the alleged incident is concerned between the present applicant and the other co-accused. The statement of the informant and the recitals of the FIR shows that the applicant was not

present at the spot of incident. As far as the conspiracy is concerned except the two phone calls which are received by the wife of the present applicant, there is no material to show that there was either meeting of mind of the co-accused and the present applicant or they meet each other prior to the incident. Now, the investigation is completed and charge-sheet is filed. Admittedly, there are criminal antecedents against the present applicant but as the *prima facie* material is not sufficient to show the involvement of the present applicant in the conspiracy, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant - Mohammad Asif @ Ghoda s/o Mohammad Yusuf in connection with Crime No.01/2023, registered with Police Station Sakkardara, Nagpur for the offence punishable under Sections 302 and 120(B) read with Section 34 of the Indian Penal Code, be released on bail on executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend concerned police station as and when required for the investigation purpose.

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

(v) The applicant shall furnish his cellphone number and address with the address proof.

(vi) the applicant shall not leave the jurisdiction of Nagpur District without prior permission of the Court.

8. The trial Court shall not influence the observation made by this Court as it is only for the purpose of bail considerations.

(URMILA JOSHI-PHALKE, J.)

**Divya*