

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

...

CRIMINAL APPLICATION (BA) NO. 1301/2022

Bilal Ansari s/o Mohammad Kasin Ansari

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Kapilnagar, Nagpur

.. Respondent

.....
Mr. D.V. Chauhan, Advocate for the applicant

Mr. V.A. Thakre, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 13th January, 2023

PC:

Heard the learned counsel for the respective parties.

2. The applicant has made three unsuccessful attempts before the learned Sessions Court seeking the relief u/s 439 of the Criminal Procedure Code. The applicant is aggrieved by the order dated 26th September, 2022 passed below Exh.2 by the learned Sessions Court, Nagpur, which was his third application that suffered rejection.

3. The applicant has been arrested in Crime No.227/2022 registered at Police Station Kapilnagar, Nagpur for the offences punishable under sections 307, 120B read with Section 34 of the IPC and Section 3 r/ws. 25 and Section 5 r/ws. 27 of Indian Arms Act, 1959 and Section 135 of the Maharashtra Police Act.

4. Briefly stated, the prosecution case is that on 29th May 2022

at about 9.00 pm, one Shakil Ahmed Sabir Ahmed (informant) had been to the pan kiosk. While returning back at about 9.50 pm, two unknown persons came on a motorcycle from behind. The pillion rider fired a bullet from a country made pistol and caused injury near the throat of the informant. Both the persons had covered their faces. It is informed that the informant is involved in activities like gambling/satta. There are couple of others including the present applicant, who are also allegedly involved in gambling/satta. The informant had a dispute with one Ajju Kabadi since last about ten years. On suspicion, the informant lodged the report against Ajju Kabadi and two unknown persons.

5. It, thus, appears that the informant thought that two unknown persons had shot him at the instance of Ajju Kabadi.

6. The applicant has come up with a case that there is absolutely no admissible evidence against him to show his complicity in the crime. The learned APP, however, submits that one of the charges against the applicant is under section 120-B of the IPC. He then submits that though there is no direct evidence against the applicant, the circumstantial evidence indicates that the applicant has played a major role. He has invited my attention to the supplementary statement dated 05th June, 2022 of the informant in which the informant has stated that initially he suspected the role of Ajju Kabadi, but he is also on inimical terms with the present applicant and therefore he suspected that the attack has been caused at his instance.

7. As many as five persons have been arrested, namely, Abdul Vakil Khan, Abdul Shah, Anwarkhan and Mumtazkhan and the

present applicant. The learned APP submits that the country made pistol has been recovered in the house search of Anwarkhan. The ballistic report has been obtained, which indicates that the bullet was fired from the said country-made pistol. According to learned APP Anwarkhan has disclosed that informant was attacked at the instance of the present applicant. On the basis of such information, the investigating agency has taken a search of applicant's car and recovered one country-made pistol. The learned APP submits that the pistol is identical to the pistol from which a bullet was fired on the informant. This recovery has been relied upon to contend that the role of the applicant in commission of the crime cannot be ruled out.

8. However, I am not inclined to accept the submissions. The evidence so far discussed cannot be said to be an admissible evidence. The statement of co-accused cannot be relied upon to implicate a co-accused. The recovery of country made pistol also cannot be taken aid of in absence of its use in the crime. The statement of informant that he suspects role of applicant can also be not taken aid of in absence of any admissible evidence against the person like the present applicant.

9. The learned APP has then drawn my attention to the statement of one Sayyed Sajid. The statement has been recorded on 7th June, 2022. Sayyad states before the police that he is acquainted with the applicant. On 29th May 2022 when he was relaxing at his house, he heard sound of fire and, therefore, came out of the house. He saw that the informant suffered injury near his throat. He further saw that the informant was being taken on a motorcycle by two persons. Informant was taken to Mayo Hospital. After about 15 to 20 minutes, the applicant

called him on phone and said that informant suffered bullet injury and that he intends to see him in hospital. He sought Sayyad's help to drive the four wheeler. They went to the hospital. Sayyad enquired with the applicant as to who might have shot at Shakil, to which the applicant showed ignorance. They went to Mayo Hospital and saw that Shakil was lying on a stretcher. At that time, the applicant asked for Sayyad's mobile. Sayyad heard the applicant talking to co-accused Mumtazkhan. The applicant was giving updates to Mumtazkhan of the health of Shakil and expressed that the job/work failed. The statement further indicates that on the next day, Mumtaz called him and expressed regret that Shakil did not die, to which the witness also agreed. The statement further indicates that Shakil used to trouble the locals and they wished that he should have died. The witness then suspected that the applicant and co-accused have made an attempt to eliminate informant. This suspicion, does not indicate anything except for the opinion of the witness. In fact, it shows that many persons were having a grudge against informant. It will be therefore difficult, on the basis of his statement, to infer that the attack was carried out at the instance of the applicant. The investigating agency ought to have collected the admissible evidence if the witness like Sayyad expressed strong suspicion of involvement of the applicant. However merely on the basis of such suspicion one cannot be implicated in the crime.

10. Put all together, it appears that the evidence collected against the applicant is not cogent and convincing at least for considering the application seeking bail. The learned APP however has further objected his release on the count that he has criminal antecedents. There are four cases registered against him. Out of which three cases are for

offences under the Gambling Act whereas the other one is u/s 325 of the IPC. These criminal antecedents cannot be taken aid of in absence of admissible evidence against the applicant to show his complicity in the crime. Learned APP then submits that if released on the bail the applicant may pressurize the prosecution witnesses particularly since the trial is about to commence. Mr. Chauhan, learned Advocate for the applicant submits the Court is vacant and the trial is not likely to commence in the near future. In any case, the apprehension can be dealt with by putting the applicant to appropriate terms.

11. Needless to mention that the observations made in this order are only for deciding this Bail Application and the Court below shall not get influenced by it.

12. Hence the order :-

ORDER

- (i) The Application is allowed.
- (ii) The applicant- Bilal Ansari Mohammad Kasim Ansari, be released on bail, in connection with Crime No.227/2022 registered with Police Station Kapilnagar, Nagpur, for an offence punishable under sections 307, 120B r/ws. 34 of the IPC and Sec. 3 r/ws. 25 and Sec. 5 r/ws. 27 of Indian Arms Act, 1959 and Sec. 135 of the Maharashtra Police Act, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The Applicant shall not enter the territorial jurisdiction of Kapilnagar Police Station, Nagpur, pending trial, except once for complying bail condition.
- (iv) The applicant shall, at the time of execution of bond, furnish his

address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number and the residence till the final disposal of the case.

(v) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) 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 from disclosing such facts to the Court or any Police Officer.

(vii) The applicant shall not leave the territory of Nagpur District without prior permission of the Court, till the trial is over.

(viii) The applicant shall maintain law and order.

(ix) In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

sahare