

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

CRIMINAL APPLICATION (BA) NO.1443/2022

Sheikh Mushir s/o Sheikh Mehmud .v.s State of Maharashtra through its PSO Ps.
Nandanvan, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. T. Deshpande, Advocate for applicant.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 3, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short the "Code"). The applicant has been arrested on 09.03.2022 in Crime No.592/2021, registered with Police Station Nandanvan, Nagpur, for the offences punishable under Sections 307, 143, 147, 148, 149 of the Indian Penal Code. During the course of investigation it has been revealed that the provisions of the Maharashtra Control of Organized Crime Act, 1999 will also be attracted and accordingly charge-sheet came to be filed against sixteen person for the offences punishable under Sections 3(1) (ii), 3(2), 3(4) of the MCOC Act.

2. Law was set in motion by the informant on 25.10.2021, when he approached to Police Station and lodged report that his son was beaten by five persons. It appears that during the course of investigation, it was revealed that the assailants were not five but were sixteen. Learned A.P.P. submits that two out of sixteen are absconding and therefore charge-sheet has been filed against fourteen persons.

3. Learned counsel for applicant submits that name of the applicant is not mentioned in the First Information Report nor was his name mentioned in the first sanction order dated 03.03.2022 issued by the Additional Director General of Police and Commissioner of Police, Nagpur City. He further submits that the applicant has been arrested only on the ground that he has been shown co-accused with accused no.1 – Shaikh Javed Sayyad Akram in another crime. According to him, there is not a single witness that attributes any role to the applicant in the present crime. The only evidence against the applicant is in the form of confessional statement of two accused recorded under Section 18 of the MCOC Act. The first is Ayub and the second is Shaklen. The said Shaklen is already released on bail. They have stated that the applicant was present at the scene of the crime but had not attributed any overt act to the applicant.

4. Learned A.P.P. would fairly submit that the evidence against the applicant is in the form of confessional statement but then he contends that the confessional statement is admissible in terms of the provisions of the MCOC Act and that therefore the presence of the applicant at the scene of crime attains significance. There is no reason why should he be present at the crime scene and accordingly prayed for rejection of the application.

5. Thus, what transpires is that the FIR has been registered against five persons. Name of the applicant is not mentioned in the FIR. His name is not mentioned in the first sanction order also. The only evidence against the applicant is confessional statement of co-accused. The co-accused also do

not attribute any overt act at the hands of the applicant. The confession would at the most indicate that the applicant was present at the scene of the crime. This evidence, even if accepted as it is, it will be quite challenging for the prosecution to prove the guilt of the applicant in the offences alleged.

6. In the circumstances, I do not have any hesitation in recording my satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the offence.

7. There are two antecedents against the applicant. One relates of assault (Section 323 of the IPC) and the other relates to breach of lock-down (Section 188 IPC). These antecedents should not affect the right of applicant in the sense that the evidence itself is so weak that the criminal antecedents may not be in itself sufficient to decline the relief. In the circumstances, there is no reason why the applicant be subjected to further incarceration.

8. The observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Judge, who is seisin of the of the trial, shall not get influenced with the above observations.

9. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Sheikh Mushir s/o Shaikh Mehmud, be released on bail in Crime No.592/2021, registered with Police

Station Nandanvan, Nagpur, for an offence punishable under Sections 307, 143, 147, 148, 149 of the Indian Penal Code and Sections 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on he executing PR. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) 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 residence till the final disposal of the case.

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

(v) 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.

(vi) The Applicant shall maintain law and order.

(vii) 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.)

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