

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

CRIMINAL APPLICATION (BA) NO. 1471/2022

(SHEIKH AKRAM @ BHURU SHEIKH REHMAN & ANOTHER **VERSUS** STATE OF MAHARASHTRA,
THR. PSO, PS SITABULDI, NAGPUR)

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

Court's or Judge's order

Shri D.V. Chauhan, counsel for the applicants.
Shri I.J. Damle, Additional Public Prosecutor for the non-applicant.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 20, 2023.

The applicants have filed this application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of regular bail.

The applicants have been arrested on 10.10.2012 in Crime No.379 of 2012 for the offences punishable under Sections 307 and 34 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act read with Section 135 of the Bombay Police Act.

The learned counsel for the applicants contends that the applicants have undergone more than ten years of imprisonment for the offences for which the punishment prescribed is ten years but in appropriate cases the same may extend to life imprisonment. The learned counsel for the applicants has invited my attention to Section 57 of the Indian Penal Code which provides that the fraction for imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. In other words, while calculating fraction of a term of punishment for life imprisonment, the life imprisonment shall be treated as equivalent to imprisonment for twenty years and that therefore the fraction would be ten years. In that sense, even if maximum punishment for the offence punishable under Section 307 of the Indian Penal Code is considered to be life imprisonment, the applicants have already undergone more than half of the sentence without conviction.

The learned Additional Public Prosecutor has opposed the application on the ground that the applicants are in jail not for the present crime but because of the conviction in Special MCOC Case No. 3 of 2013 arising out of Crime No. 380 of 2012 for the offences punishable under Sections 302 read with 34 of the Indian Penal Code. He further contends that the applicants are notorious persons and have terror in the locality, they may pressurize the prosecution witnesses in the event of their release on bail.

It appears that the applicants have been arrested on 10.10.2012 in both the crimes i.e. Crime Nos.379 of 2012 and 380 of 2012. It cannot be therefore said that applicants have not suffered incarceration in the present crime. The applicants therefore are entitled to be released on bail under Section 436A of the Code of Criminal Procedure, 1973. The apprehension put forth by the learned Additional Public Prosecutor can be dealt with by putting the applicants to appropriate terms. Hence, the following order is passed:-

ORDER

1. The criminal application is allowed.
2. Applicant no.1-Sheikh Akram @ Bhuru Sheikh Rehman and the applicant no.2-Kamlesh @ Pappu Dwarkaprasad Gupta be released on bail in connection with Crime No. 379 of 2012 registered with Police Station Sitabuldi, Nagpur for the offences punishable under Sections 307 and 34 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act read with Section 135 of the Bombay Police Act on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount.
3. The applicants shall at the time of execution of bond furnish their address with 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.
4. The applicants shall regularly attend the Court and co-operate the learned trial Court to complete the trial for the above offences. The applicants shall not seek adjournments except under extreme circumstances to the satisfaction of the trial Court.

5. The applicants 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.
 6. The applicants shall not enter the territorial jurisdiction of Police Station Sitabuldi till the trial is completed.
 7. The applicants shall maintain the law and order.
 8. In case of breach of any of the aforesaid conditions, the trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.
- The criminal application is disposed of in aforesaid terms.

(ANIL L. PANSARE, J.)

APTE