



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

CRIMINAL APPLICATION (BA) NO.1086 OF 2023

(Mohd. Zishan Shaikh Abdul Jabbar Shaikh 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. C.R. Thakur, Advocate for the applicant.
Ms M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 21, 2023.

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.125/2023, registered with Police Station Tahsil, Nagpur for the offence punishable under Sections 302, 143, 147, 148, 201, 120-B read with Section 149 of the Indian Penal Code.

3. The applicant is arrested on 15/02/2023. Since then he is behind bar.

4. The accusation against the present applicant is on the basis of report lodged by Kalim Sheikh Wald Karim Sheikh on an allegation that on 08/02/2023 at about 1.00 a.m. at Agrasen square, Nagpur when informant namely Kalim Sheikh and his friend Parvez Sheikh Wald Papamiya Sheikh were chitchatting with each other. The accused persons came there and co-accused namely Parvez Wald Yakub Khan gave a blow

of knife on the neck of the deceased. It is further alleged that the other co-accused have also gave a blow of knife on the person of the deceased on the various parts of the bodies. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

5. Learned Counsel for the applicant submitted that as far as the role of the present applicant is concerned he is not named in the FIR. During investigation, the statements of the various witnesses are also recorded. They have also not named the present applicant in their statement.

6. The statements of these witnesses are also recorded during 164 statements. Only material against the present applicant is that the identification parade wherein the informant and other eye-witnesses have identified the present applicant as one of the assailant. He submitted that investigation is now completed and charge-sheet is filed. General allegation is made against the present applicant. Other two accused are already released on bail. In view of that the present applicant be released on bail.

7. Learned Additional Public Prosecutor strongly opposed the application on the ground that though the present applicant is not named in the FIR but he is identified during the identification by the informant as well as other eye-witnesses. The alleged incident has taken place on account of previous dispute on the money.

8. Though investigation is completed and charge-sheet is filed. Considering that the deceased has sustained in all 41 injuries on his person and the involvement of the present applicant is also revealed as present applicant is identified during the identification parade. The application deserves to be rejected.

9. Having heard both the sides. Perused the investigation papers. There is no dispute as to the fact that there was a previous dispute between co-accused Parvez Yakub Khan and Parvez Sheikh Papamiya Sheikh on account of money transaction between them. As per the allegations, prior to the incident of 07/02/2023 at about 10.00 p.m. when the informant and deceased were standing in Raza Chowk, Roshanbagh, Kharbi, Nagpur co-accused Parvez Yakub Khan came there and there was communication between them. Thereafter in the midnight when informant and the deceased were chitchatting, at that time present applicant along with other four persons came and assaulted the deceased Parvez Sheikh Papamiya Sheikh. As far as the allegation is concerned the name of the present applicant is not mentioned in the FIR. It is stated that two unknown persons were along with the co-accused Parvez Yakub Sheikh who have also assaulted the deceased by means of knife. During investigation, the statement of the present informant as well as the statement of the eye-witnesses recorded under Section 164 of the Code of Criminal Procedure wherein also the present applicant who has not named and general

allegation is made that all the accused assaulted the deceased by means of knife. The post-mortem report which is on record shows that there are in all 41 injuries and maximum injuries are in the nature of stabbed injuries. From the statements of the witnesses, it revealed that the present applicant was unknown to them and his name is not mentioned in the FIR. However, during the test identification parade, the informant as well as the eye-witnesses has identified the present applicant.

10. Considering that general allegations are made against the present applicant and none of the statement discloses that the present applicant was also along with the co-accused and no weapon is assigned in the hands of the unknown persons in the statements. The recitals of the FIR and the statements of the witnesses shows that it was the co-accused who has given repeated blows on the person of the deceased. Now, investigation is completed and charge-sheet is filed. Considering the general allegation is made against the present applicant, his bail application can be considered by using the discretion in his favour. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Mohd. Zishan Shaikh Abdul Jabbar Shaikh in connection with Crime No.125/2023, registered with Police Station Tahsil, Nagpur for the offence

punishable under Sections 302, 143, 147, 148, 201, 120-B read with Section 149 of the Indian Penal Code, be released on bail on furnishing PR. Bond in the sum of Rs.30,000/- with one surety in the like amount.

(iii) The applicant shall not enter in the village Kharbi, Police Station Wathoda, Nagpur till the culmination of the trial.

(iv) The applicant shall furnish his Cell phone number and address with address proof before the Investigating Officer.

(v) 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.

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

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)