

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

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CRIMINAL APPLICATION (BA) NO. 1488/2022

Bholeswar Shyamlal Nirmalkar

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Yashodharanagar, Nagpur

.. Respondent

.....
Mr. M N Ali, Advocate for the applicant

Mr. I.J.Damle, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 13th February, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 21st July 2021 in Crime No. 481/2021 for the offences punishable under Sections 302, 143, 144, 147, 148, 504 of the Indian Penal Code registered at Police Station, Yashodharanagar, Nagpur.

2. Briefly stated, the case of the prosecution is that Manish and his friends have killed Atul, the son of the informant. Having heard both the sides, it appears that the informant and couple of witnesses have stated before the police that the deceased has named Manish and his friends, namely, Tushar, Pappu, Ankit and Sunil for the fatal assault. Thus, the statements indicate that Atul has been killed by these five persons. The question is whether the name 'Pappu' uttered by the deceased before his death is the applicant and none else. The name of the applicant is Bholeswar

Shyamlal Nirmalkar. The prosecution claims that the nick-name of said Bholeshwar is Pappu. However there is nothing on record to show that Bholeshwar is known as Pappu as well. The Investigating Officer has not recorded the statement of a common friend of Manish or the relatives of Bholeshwar to show that Bholeshwar is also called as Pappu. There is nothing on record to show as to on what basis the Investigating agency claims Bholeshwar to be Pappu. In the circumstances, though there is an eye witness to the incident, to my mind, it will be challenging for the prosecution to prove that the name Pappu uttered by the deceased prior to his death, is the present applicant. It is so because the eye witness has stated that he has seen Manish and 3 /4 boys assaulting Atul. He however states that he could not properly see the other 3 /4 boys. The Investigating Officer has not subjected the applicant to the test identification parade and, therefore, his identity has not been fixed.

3. It is unfortunate that when the crime as serious as for offence punishable u/s 302 of IPC, the I.O. has not taken even efforts to fix the identity of the person named Pappu, whose name has been uttered by the deceased prior to his death. May be that the applicant is known as Pappu or that his nick-name is Pappu, but then in absence of statement of any witness in support thereof, one cannot really infer that the applicant is the same person whose name has been uttered by the deceased.

4. The charge-sheet has been filed on 14.10.2021. The charges have yet to be framed. The trial will take some time to commence and conclude. When asked, the learned Advocate for the applicant submits that there are no criminal antecedents against the applicant. It is contended that the applicant is residing at the given address for last so many years. In the circumstances and considering the nature of evidence against the applicant, the personal liberty enshrined under the Constitution cannot be compromised.

5. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

6. Hence, the following order :

(i) The Application is allowed.

(ii) The applicant- Bholeshwar Shyamlal Nirmalkar, be released on bail, in connection with Crime No.481/2021 registered with Police Station Yashodharanagar, Nagpur for offences punishable under Sections 302, 143, 144, 147, 148, 504 of the Indian Penal Code, 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, 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 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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