

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

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CRIMINAL APPLICATION (BA) NO. 1490/2022

Khushal s/o Vijay Shinde

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Arni Dist. Yavatmal

.. Respondent

.....
Mr.A.S. Manohar, Advocate for the applicant

Mr.Nitin Rode, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th February, 2023.

PC:

Leave to amend paragraph 4 by filling up the blank space, is granted. The amendment be carried out forthwith.

2. Heard both sides.

3. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 23.04.2022 in Crime No. 273/2022 for the offences punishable under Sections 302, 307, 504, 506, 143, 148, 149 of the Indian penal Code along with Sections 4,25 and 27 of the Indian Arms Act, registered at Police Station Arni, Dist. Yavatmal.

4. The law was set in motion on 18.03.2022 by the brother of the deceased. The informant, namely Satish has stated in the FIR that he along with his brother Atish and others were celebrating Holi festival. At that that time, accused Rohan Soyam and Chandan Soyam and unknown persons joined them. It is alleged that the friends of informant have removed Rohan, Chandan and their friends from the dancing group.

There occurred a quarrel between the informant and his friends on one side and Rohan and his friends on the other side. Rohan and his friends left the spot, however they returned back after half-an-hour. The informant has stated that Rohan, Chandan and two others returned back and insisted to dance together to celebrate *Holi*, as a result, again there occurred a quarrel. Rohan and his friends started beating the informant, his brother Atish and others. Two unknown persons and Rohan caught hold of Atish and Chandan inflicted knife blows on the chest and thereafter they all fled away. Atish succumbed to the injuries.

5. I have gone through the contents of the FIR and the statements of the witnesses with the able assistance of learned counsel for the applicant and the learned APP. There are two versions of the story. In the first version, the informant and witnesses have stated that Rohan, Chandan and two unknown persons returned back at the spot where the informant and his friends were dancing. There occurred a quarrel between two groups. Rohan and two known persons caught hold of Atish; Chandan has inflicted knife blow on the chest and thereafter the assailants ran away. In this version the name of the applicant is not mentioned. Two unknown persons were not subjected to test identification parade. It is thus not clear whether the applicant was one amongst the two unknown persons.

6. The second version of the story is narrated by the informant and the witnesses after five days i.e. 23.03.2022. The informant in the earlier story has added that after some days, when he discussed with his friends Sunil and Nilesh, it was revealed that three unknown persons, namely Sandip Pendar, Khushal Shinde (the present applicant) and

Shrikant Rathod has accompanied Rohan and Chandan at the spot. It is then stated that Khushal and Shrikant have assaulted the informant and his brother Atish by means of fist blows. Similar is the statement of Sunil and Nilesh. Surprisingly, both Sunil and Nilesh have in the first paragraph of their statement, stated that Rohan, Chandan and two unknown persons were responsible for the assault. They have also not named the applicant in the first paragraph. However in the concluding paragraph both the witnesses have stated that the applicant and Shrikant have assaulted informant and his brother by fist blows.

7. The learned APP has invited my attention to the statement of informant recorded u/s 164 of the Cr.P.C., wherein he states that Rohan, Chandan, Sandip, Shrikant and Khushal had returned back to the spot, thereafter the quarrel occurred between them and that Sandip and Rohan had caught hold of Atish and Chandan has inflicted knife blow on the chest of the deceased. Thus, it is argued that the name of assailants has been stated by the informant.

8. I do not find any substance in the aforesaid submission for two reasons. Firstly, the informant in FIR and the witnesses in their statements recorded on 23.03.2022 are completely silent on the role of the applicant. In fact, the informant has not named the applicant in the FIR. In the statement though he has named the applicant, the role attributed is that he has assaulted informant and his brother by fist blows. In the circumstances, when the informant has not named the applicant in the FIR, the applicant ought to have been subjected to the test identification parade, more so because even in the statement dated 23.3.2022, the informant states that he received knowledge of

involvement of the applicant from his friends, namely, Sunil and Nilesh. So far as the statement of Sunil and Nilesh are concerned, their statement in the first paragraph indicates involvement of four persons without naming the applicant. However in the concluding paragraph, they have named the applicant to have assaulted by fist blows. Thus, it is difficult to understand as to how the involvement of four persons has been converted into five. There is no justification whatsoever coming forth in this regard from the mouth of the witnesses.

9. The second reason is that even if the statement of informant u/s 164 of the Code is to be believed, he does not attribute any role to the applicant. The learned APP contends that the offence is registered under sec. 149 of IPC as well. However to attract the ingredients of Section 149, the prosecution will have to show that the assembly was unlawful. Here the witnesses, in first version, states that only four persons were responsible for the offence and have later converted it to five persons without any justification.

10. The applicant is behind the bars since 23.04.2022. The charge-sheet has been filed on 15.05.2022. The charge has not yet been framed. It will take some time to commence and conclude the trial. When enquired, learned Advocate for the applicant states that there are no criminal antecedents against the applicant. He is residing at the address given for last many years. In view of the above and considering the nature of evidence against the applicant, I am of the view that no fruitful purpose will be served by keeping him behind the bars.

11. 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.

12. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Khushal Vijay Shinde, be released on bail, in connection with Crime No. 273/2022 registered with Police Station Arni Dist. Yavatmal for the offences punishable under Sections 302, 307, 504, 506, 143, 148, 149 of the Indian Penal Code and Sections 4,25 and 27 of the Arms Act, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one 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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