



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

CRIMINAL APPLICATION (BA) NO.37 OF 2024

Ali Shah s/o Shoukat Shah

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Kapil
Nagar, Nagpur

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

Court's or Judge's orders

Mr. S. D. Chande, Advocate for applicant.
Ms. Swati Kolhe, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/03/2024

1. The applicant came to be arrested on 03.06.2022 in connection with Crime No.227/2022 registered at Police Station Kapil Nagar, Nagpur for the offences punishable under sections 307 and 120-B read with Section 34 of the Indian Penal Code and Section 3 r/ws. 25 and Section 5 r/ws. 27 of Indian Arms Act, 1959 and Section 135 of the Maharashtra Police Act.

2. The accusation against the present applicant is on the basis of report lodged by one Shakil Ahmed Sabir Ahmed, who is injured in the said incident that he had been at about 9.00 p.m. on 29th May 2022 to the pan kiosk. While returning back at about 9.50 pm, two unknown persons came on a motorcycle from behind. The pillion rider fired a bullet from a country-made pistol and caused injury

near his throat. Both the persons have covered their faces. It is further alleged that he had enmity with one Ajju Kadi and therefore, he has engaged some persons who have assaulted him. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel Mr. Chande, for the applicant submitted that except the statement of the co-accused, there is no other material to connect the present applicant with the alleged offence. He further submitted that no identification parade was held. The CCTV footage panchnama also nowhere shows the description and none of the witnesses have also described the applicant. So, there is no evidence to show that it was the present applicant, who has fired the bullet on the deceased and he was a pillion rider on the motorcycle at the relevant time. He submitted that five persons have been arrested namely Abdul Vakil Khan, Abdul Shah, Anwar Khan, Mumtaz Khan and the present applicant. He also submitted that the country-made pistol is also recovered from the co-accused. The ballistic report has been obtained, which indicates that the bullet was fired from the said country-made pistol. He submitted that considering the material collected during the investigation, no evidence to connect the present applicant with the alleged offence. Now, the investigation is completed and charge-sheet is filed,

further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the application on the ground that during the investigation, the statement of the co-accused was recorded on the basis of which the involvement of the present applicant was revealed. She further submitted that, considering the fact that the informant has sustained the grievous injury on the vital part of the body which is due to the fire of the bullet by the present applicant. The CCTV footage is sent for the analysis. Considering the same, and there are criminal antecedents against the present applicant, the bail application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, it reveals that the co-accused Bilal Ansari s/o Mohammad Kasin Ansari, Mumtaz Khan alias Pehelwan Rasul Khan and Abdul Anwar Khan are already released on bail by this Court in various applications. Admittedly, except the statement of the co-accused, there is no other material to connect the present applicant with the alleged offence to show that it was the present applicant, who has fired a bullet towards the injured at the relevant time. From the investigation papers, it further show that the informant was having dispute

with various persons in the same locality. The statement further indicates that the informant is the influential person and there was terror in the locality of the informant. The witnesses suspected that the applicant and co-accused had made an attempt to eliminate the informant. Thus, except the suspicion there is no other material on record. Admittedly, suspicion cannot take place of proof to show the *prima facie* case against the present applicant. Now, the investigation is completed and charge-sheet is filed. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The Application is allowed.

(ii) The applicant- **Ali Shah s/o Shoukat Shah**, be released on bail, in connection with Crime No.227/2022 registered with Police Station, Kapil Nagar, Nagpur, for an offence punishable under sections 307, 120-B read with Section 34 of the Indian Penal Code and Section 3 read with Section 25 and Section 5 read with Section 27 of Indian Arms Act, 1959 and Section 135 of the Maharashtra Police Act, on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter the territorial jurisdiction of Kapil Nagar Police Station, Nagpur, pending trial, except once for complying bail condition.

(iv) 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 mobile number and the residence till the final disposal of the case.

(v) The applicant shall regularly attend the proceeding at the learned trial Court and shall not seek any exemption unless exceptional circumstances.

(vi) The applicant shall not induce, threat or promise to any witness who are acquainted with the facts of the case.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)