



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

CRIMINAL APPLICATION (BA) NO.81 OF 2024

(Kedar s/o Ghanshyam Charpate Vs. 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. K.R. Trivedi, Advocate for the applicant.
Mr. Badar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 28, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 13/03/2022 in connection with Crime No.146/2018 registered with Police Station Achalpur, District Amravati for the offence punishable under Sections 302, 307, 353, 341, 427, 504, 506 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by PSI Shubhangi Gajanan Thakare who disclosed that in the intervening night of 03/09/2018 she was on a patrolling duty. She intercepted three boys and on inquiry with them they disclosed their names as Kedar Ghanshyam Charpate i.e. the present applicant, Nitin Kholapure and Nayan Mandale. She enquired with them why they are there in the midnight and they disclosed that they came there to have a tea.

Thereafter she proceeded from the said spot and when she was on patrolling duty she came in front of Kavita hotel. The hotel owner stopped her and other team and disclosed that three persons came there having iron rod in their hand and they abused. Thereafter she searched for the three boys but she could not traced them. Thereafter she had seen the deceased lying on the road who has sustained the injuries on his head. On the basis of said report, the FIR is lodged against the three persons including the present applicant.

3. Learned Counsel for the applicant submitted that now the investigation is over and charge-sheet is already filed. There is no progress in the trial. He further submitted that the present applicant is released on bail in another Crime No.7/2022. The Hon'ble Apex Court granted a liberty to file appropriate application for grant of bail in the present crime also. He further submitted that there is no eye-witness to account the entire case and the prosecution case is based on the circumstantial evidence. Except the recovery of the iron rod and the identification during the TI parade there is no other material to connect the present applicant with the alleged offence. Now, the investigation is already completed and charge-sheet is filed. Considering the fact that the co-accused to whom the similar role is attributed are already released on bail. The present applicant shall be released on bail on the ground of parity.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant along with the other co-accused are seen by the informant in a suspicious condition thereafter the deceased was found lying on the road. During investigation, it revealed that the involvement of the present applicant as well as other co-accused is reflected. The two iron rods are seized at the instance of the present applicant. The blood stained clothes of the present applicant is also seized and the applicant is identified during the identification parade. Thus, considering the *prima facie* material against the present applicant, the application deserves to be rejected.

5. I have heard learned Counsel appearing for both the parties. Perused the orders passed by this Court while releasing the co-accused on bail. The statement of the informant shows that she was having night duty for patrolling from 11.00 p.m. on 03/09/2018 till five hours on 04/09/2018. As per her statement while patrolling she along with the patrolling party found three persons sitting at one hotel by name Kavita hotel and on enquiry they disclosed their identity as Kedar (present applicant), Nitin and Nayan who are the co-accused. The statement further reveals that she asked them to leave the place and being asked so they left the place. After sometime when again she was taking round, she came near the Kavita hotel, at that time, owner of the hotel one Datta Shahare disclosed that those three persons again had been there having rod and they were abusing the police department. The

statement of PSI Thakare further shows that thereafter she informed the said duty police officer by telephonic communication and directed to search them. It further reveals that one person Shantilal Patel was found lying in an injured condition in front of Dr. Rawat Hospital. During the investigation, the statement of another witness Vicky Chavan also recorded who works on the Reliance Petrol Pump at Achalpur. From his statement it reveals that three persons came there for filling a petrol and at that time the co-accused Nitin was having iron rod on his hand and similarly at 3.30 a.m. on 04/09/2018 Nayan came and filled petrol again. The statement of Police Constable Kanta Mahore also disclosed that the police staff informed that three youth are roaming with iron rod and the statement further shows that at about 3.20 hours on 04/09/2018 one Chaudhari informed on telephonic call to the police station that one person is lying in an injured condition near Dr. Rawat Hospital. Thus, her statement further shows that since she was having suspicion three persons were roaming with iron rod they must have attacked on the deceased.

6. Thus, on the suspicion that the persons who were found roaming in a suspicious condition i.e. the present applicant and other co-accused, the investigation was carried out and iron rods was seized at the instance of the present applicant.

7. Learned Additional Public Prosecutor submitted that the memorandum statement of the applicant at whose instance the iron road was seized and the admissible portion shows that it was used in the alleged crime. Thus, *prima facie* material is there to connect the present applicant and he prays for the rejection of the application.

8. On perusal of the investigation papers, it shows that besides the statement under Section 27, the applicant was put in a TI parade and he was identified during the identification parade but said identification parade is only to the extent that he was seen roaming in the intervening night of 03/09/2018 and 04/09/2018. As far as the statements of the witnesses are concerned which only shows his suspicion against the present applicant. On the similar set of facts the other co-accused are already released on bail. The similar role is attributed to the present applicant.

9. Looking to the fact that there are no eye-witnesses and the applicant is behind bar since the date of his arrest. Similarly, there is no progress in the trial. The applicant cannot be kept behind bar for indefinite period. Considering all these facts and on the ground of parity also the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Kedar s/o Ghanshyam Charpate in connection with Crime No.146/2018 registered with Police Station Achalpur, District Amravati for the offence punishable under Sections 302, 307, 353, 341, 427, 504, 506 read with Section 34 of the Indian Penal Code, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a month i.e. first day of every month between 10.00 a.m. and 1.00 p.m. till culmination of the trial and the Police Officer shall record his presence.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

10. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)