



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

CRIMINAL APPLICATION (BA) NO.134 OF 2024

IrfanKhan @ Immu s/o Raufkhan Pathan

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Wardha (City), District Wardha

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

Court's or Judge's orders

Mr. A. P. Tathod, Advocate for applicant.
Mr. Nitin Autkar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/03/2024

1. The applicant came to be arrested on 10.07.2021 in connection with Crime No.730/2021 registered with Police Station Wardha (City), District Wardha for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and under Sections 4/25 and 27 of the Indian Arms Act.

2. Learned Counsel for the applicant submitted that prior to lodging of the said First Information Report the co-accused Sagar Zade had lodged the report with the Wardha City Police Station bearing Crime No.729/2021 alleging that he and other co-accused Asif @ Motya and the present applicant have sustained the injuries as they were assaulted by the informant and his companion. He submitted that the cross complaints are filed against each other alleging that they have assaulted to each

other, injured Rahul has sustained the injury on his abdomen as he was assaulted by Asif @ Motya and the present applicant. The injuries sustained by the injured was stab injury on his abdomen 3 x 1 cm.

3. He further submitted that now the co-accused to whom the similar role is attributed is already released on bail. It was a free fight between the two parties. Both party members were holding deadly weapons like knives and swords. He further submitted that as far as the present applicant is concerned, the role attributed to him is the general statement that he has also assaulted by means of Gupti on the person of the injured and other prosecution witnesses. He submitted that now the injured is already discharged from the hospital. Now, there is no apprehension of his death. The applicant is behind bar since 10.07.2021. There is no progress in the trial. In view of that, further incarceration of the present applicant is not required and he be released on bail.

4. Learned APP strongly opposed the application on the ground that as far as delay in trial is concerned, it is not because of the prosecution that the delay is caused, but the said delay is for the reason that some of the accused approached to this Court for quashing of the FIR and some of the accused have not engaged the Counsel to represent them. He submitted that as far as the role of the

present applicant is concerned, which is very specific who was holding the Gupti and assaulted the informant as well as the injured. Though injured is discharged from the hospital and there is no apprehension regarding the anticipation of the death but considering the injury sustained by the injured which sufficiently shows that it was the injury in the nature of endangering the human life. If the applicant is released on bail, he would tamper with the prosecution evidence and prays for rejection of the application.

5. After hearing the learned Counsel for the applicant and learned APP for the State. On perusal of the investigation papers and the recitals of the FIR, there is no dispute that counter cases are registered against each other and both members who are involved in the said fight have sustained the injuries. The present applicant has also sustained the injuries. It was a free fight in between the accused persons and the informant and his companion. Four persons are injured in the incident. Admittedly, Ravi has sustained a grievous injury, which might have proved fatal to him if he was not treated timely. Now, he is discharged from the hospital and the injuries now are not the life threatening injuries. The injuries sustained by the present applicant are simple in nature. Admittedly, the delay in trial is not because the prosecution do not want to proceed with the matter but it was

because some of the accused approached this Court for quashing of FIR and some of the accused have not engaged the Counsel.

6. Considering that the injuries are caused to the witnesses as well as the accused persons are during the scuffle between them and now the investigation is completed, and charge-sheet is filed, no purpose would be served by keeping the present applicant behind bar. The co-accused against whom the similar allegations are levelled is already released on bail. Thus, on the ground of parity also the applicant deserves to be released on bail, in view of that the application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant – **IrfanKhan @ Immu s/o Raufkhan Pathan** in connection with Crime No.730/2021, registered with Police Station Wardha (City), District Wardha for the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code and Sections 4/25 and 27 of the Arms Act, be released on bail on furnishing 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 on the first day of every month, till the culmination of the trial.

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

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person who are connected with the alleged crime.

(vi) On breach of any of the conditions, the bail granted to the present applicant deserves to be cancelled.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)