



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

CRIMINAL APPLICATION (BA) NO. 220 OF 2024

Afsar Khan s/o Mohammad Khan V/s 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. M.V.Rai, counsel for applicant.

Ms. H.N.Prabhu, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/06/2024.

1. The applicant came to be arrested on 02/07/2022, in connection with Crime No. 169/2022 registered with Police Station Samudrapur, District Wardha for the offence punishable under Sections 394 read with Section 34 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of report lodged by Mojibul Ajimuddin Ansari alleging that on 03/03/2022 at about 11.00 p.m. when he was sleeping in his shop, three unknown persons entered into the shop, out of which, two persons were holding the knife and one person was holding the stick and was assaulted by them. He further alleged that the said persons took the amount of Rs. 5,000/- from his pant pocket, Rs. 2400/- from the cash box and one mobile phone worth of Rs. 1,000/-. On the basis of said report, the police have registered the crime against the present applicant.

3. He further alleged that dacoits have also snatched the Golden Mangalsutra of his wife. On the basis of said report, the police have registered the crime against the present applicant.

4. Learned counsel for the applicant Mr. M.V.Rai submitted that except the recovery of a mobile phone, one motorcycle, a knife, and two big beads of yellow metal, seven small beads of yellow metal. There is no material to connect the present applicant with the alleged offence. He submitted that said ornaments had not been identified by the witnesses. Now, the investigation is completed and charge-sheet is filed, the identification parade of the present applicant is not held. Merely on suspicion, the present applicant is arrested. He submitted that with similar allegations another co-accused is already released on bail by this Court. In view of that, the present applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that prima-facie material collected during the investigation shows that golden ornaments which were alleged to be snatched from the wife of the informant were recovered from the present applicant. One knife and one motorcycle are also recovered from the present applicant. Thus, prima-facie material shows the involvement of the present applicant therefore, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the non-applicant/State, perused the investigation papers. Admittedly, the FIR is lodged against the unknown person. During the investigation, the name of the present applicant was revealed, some golden beads, and one Mangalsutra were seized from him, at his instance on the basis of memorandum statement. One motorcycle is also seized from him. As far as the identification of the golden ornament is concerned, a supplementary statement of the informant or his wife is not recorded to show that this golden ornament or the same ornaments, which are stolen from the informant and his wife. The test identification parade is also not held to connect the present applicant with the alleged offence. Considering the fact that, now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is concerned, which is not required. As far as the criminal antecedents are concerned, which can be taken care of by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The criminal application is **allowed**.
- b) The applicant- Afsar Khan s/o Mohammad Khan shall be released on bail, in connection with Crime No. 169/2022 registered with Police Station Samudrapur, District Wardha for the offence punishable under Sections 394 read with Section 34 of the Indian Penal Code, 1860, on executing PR.

Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station once in a month on 1st of every month between 10.00 a.m. to 01.00 p.m. and the Police Officer of the concerned Police Station shall record his presence.
- d) The applicant shall not leave the jurisdiction of the Wardha District without prior permission of the Court.
- e) The applicant shall not induce, threat or promise to any witnesses who are acquainted with the facts of the present case.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]