



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

CRIMINAL APPLICATION (BA) NO.625 OF 2024

(Najeer Rafeek Sheikh 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. A.C. Jaltare, Advocate for the applicant.
Mr. K.R. Lule, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 14, 2024.

By this application, the applicant is seeking bail as he was arrested on 26/01/2024 in connection with Crime No.84/2024 registered with Police Station Ram Nagar, Chandrapur for the offence punishable under Sections 143, 147, 148, 302 read with 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. The crime is registered on the basis of report lodged by Nilesh Bhagwan Hiwrale on an allegation that there was a previous dispute between the co-accused and the deceased Shiva Wazarkar on account of obtaining the loan to purchase the vehicle. On 25/01/2024 at about 8:00 PM when the informant along with the deceased and the other friends were chitchatting. The deceased has received phone call of co-accused Himanshu Kumre who abused him and thereafter called him in front of the office of Swapnil Kashikar, one of the co-accused. There was hot exchange of words between them and during the altercation of the words, the co-accused Himanshu Kumare has taken out the knife and give the blows on the

abdomen of the deceased, due to which deceased fallen on the ground and thereafter he was assaulted by fist and kick blows. Though deceased was taken to the hospital, he succumbed to the death. On the basis of said report police have registered the crime against the present applicant and the other co-accused. As far as the allegation against the present applicant is concerned which is to the extent that he was present along with co-accused Himanshu and Swapnil Kashikar.

3. Learned Counsel for the applicant submitted that as far as the present applicant is concerned except his presence, there is no other material to connect him with the alleged offence. The presence might be there due to the friendship between the present applicant and the other co-accused. As far as his knowledge that the co-accused was carrying the knife along with him, there is no material to show that he was aware about the intention of the other co-accused. He submitted that during investigation his clothes are recovered by the investigating agency wherein the blood stains were not found. He further invited my attention towards the CCTV footage and submitted that the CCTV footage nowhere shows the presence of the present applicant during the alleged incident. There were total 7 cameras were there and from all the cameras the footage was taken but the presence of the present applicant nowhere reveals. Now, the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. He

further submitted that as far as the conspiracy part is concerned no CDR reports showing the connection between the present applicant and the other co-accused prior to the incident through the telephonic communication. There is only one call between the present applicant and one co-accused Ansar Pathan who is his cousin and that is also after the incident. He submitted that considering the entire material collected during the investigation, except the presence as alleged by the eye-witnesses which is falsified by the CCTV footage, no other material to connect him with the alleged offence. In view of that, he be released on bail.

4. Learned APP strongly opposed the application on the ground that the gravity of the offence is to be looked into. At the same time, the statements of the 7 eye-witnesses shows the involvement of the present applicant. It is a consolidated act executed by all the accused. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that out of the previous dispute the deceased was called by one of the co-accused in front of the office of the other co-accused Swapnil Kashikar. It further reveals from the investigation papers that there was a previous dispute between the deceased and the said Swapnil Kashikar on account of obtaining the loan by the deceased to purchase the vehicle and the said vehicle was in possession of the said Swapnil Kashikar. There was previous dispute

between the deceased and the present applicant as the deceased was appointed as the Office bearer of the Shivsena Party as a Young President of the City and said Swapnil Kashikar was also interested in the said post. Thus, he submitted that there was a motive for the Swapnil Kashikar also to eliminate the deceased. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers. There is no dispute as to the fact that there was a previous dispute between the co-accused Swapnil Kashikar and the deceased. On that count when the present applicant was along with the co-accused, the co-accused Himanshu has called the deceased and asked him to come in front of the office of the co-accused Swapnil Kashikar. As far as the knowledge of the present applicant regarding the alleged incident is concerned and the co-accused is carrying the knife, there is no material to show that. No overt act is attributed to the present applicant during the quarrel. As far as the assault by the fist and kick blows is concerned which is a general allegation made against all the co-accused. Though eye-witnesses are stated about the presence of the present applicant at the spot of incident however, the CCTV footage collected by the investigating agency nowhere discloses regarding the presence of the present applicant. Even accepting the investigation material as it is and accepting the presence of the present applicant at the spot of incident, admittedly, no overt act

is attributed to the present applicant. As far as the alleged incident is concerned there was no motive for the present applicant also as there was no previous dispute between him and the deceased. The previous enmity was between the co-accused Swapnil Kashikar and the deceased, therefore, the motive and the intention can be attributable to the co-accused Swapnil Kashikar. Now, the investigation is completed and charge-sheet is filed. As far as the allegation regarding the conspiracy is concerned, except one phone call between the present applicant and the co-accused Ansar Pathan, there is no other material. Admittedly, direct evidence would not be available to show the involvement in the conspiracy but however there should be some evidence on record to show the involvement of the present applicant in the conspiracy. Considering the material collected by the investigating agency, admittedly no overt act is attributed to the involvement of the present applicant. As to the conspiracy is concerned no direct evidence is available and the circumstantial evidence is also not connecting the present applicant as regards to the conspiracy is concerned. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicant – Najeer Rafeek Sheikh in connection with Crime No.84/2024 registered with Police Station Ram Nagar, Chandrapur for the offence punishable under

Sections 143, 147, 148, 302 read with 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter in vicinity of Chandrapur city except attending the trial before the Sessions Court.

(iv) The applicant shall furnish his address wherein he is intending to reside after releasing on bail along with the address proof.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vi) The applicant shall not leave the jurisdiction of entire Chandrapur district without prior permission of the Court.

(vii) The applicant shall attend the proceedings before the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)