



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

CRIMINAL APPLICATION (BA) NO.1146 OF 2023

Abdul Faizal @ Immu Abdul Salim Shaikh

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Tahsil,
District Nagpur

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

Court's or Judge's orders

Mr. C. R. Thakur, Advocate for applicant.
Mr. A. G. Mate, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/01/2024

1. Heard.
2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.125/2023 registered with Police Station, Tahsil, District Nagpur for the offence punishable under Sections 143, 147, 148, 302, 201 and 120-B read with Section 149 of the Indian Penal Code. The applicant is arrested on 15.02.2023 and since then he is behind bar.
3. The accusation against the present applicant is on the basis of report lodged by Kalim Sheikh s/o Karim Sheikh on an allegation that on 08.02.2023 at about 1.00 a.m. at Agrasen Square, Nagpur when informant namely Kalim Sheikh and his friend Parvez

Sheikh s/o Papamiya Sheikh were chit-chatting with each other. The accused persons came there and co-accused namely Parvez s/o Yakub Khan gave a blow of knife on the neck of the deceased. It is further alleged that the other four persons who were unknown have also gave a blow of knife on the person of deceased on various parts of the body and committed his murder. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

4. Learned Counsel Mr. Thakur, for the applicant submitted that as far as the role of the present applicant is concerned, he is not named in the FIR. During the investigation, the statements of the two eye witnesses namely, Suraj Yadav and Kalim Sheikh s/o Karim Sheikh who is informant are recorded as well as their statements under Section 164 of the Code of Criminal Procedure (Cr.P.C.) are also recorded. Though they have stated in their one Section 161 Cr.P.C. statement regarding the role of the present applicant that the unknown person assaulted by means of knife. However, in Section 164 of Cr.P.C. statement only allegation against the unknown person is that one unknown person has hold behind of the informant. Both the eye witnesses have not attributed any role to the present applicant during their statements under Section 164 of Cr.P.C. He submitted that the similar role is attributed to the co-accused Mohammad Zishan Sheikh Abudl Jabbar Sheikh who is

already released on bail. Now investigation is completed and charge-sheet is filed. General allegation is made against the present applicant. Other three accused have already released on bail. In view of that, and considering the inconsistency in the statement of the witnesses, the applicant be released on bail.

5. Learned APP strongly opposed the application on the ground that though the present applicant is not named in the FIR but he is identified during the identification parade by the informant as well as the other eye witnesses. The alleged incident has taken place on account of previous dispute on money. Though investigation is completed, considering the deceased has sustained in all 41 injuries on his person and the involvement of the present applicant also revealed on the basis of identification parade, *prima facie* case is made out and the application deserves to be rejected.

6. Having heard both the sides and perused the investigation papers. There is no dispute as to the fact that there was a previous dispute between co-accused Parvaz Yakub Khan and the deceased Parvaz Sheikh Papamiya Sheikh on account money transaction between them. As per the allegation, prior to the incident on 07.02.2023 at about 10.00 p.m. when the informant and deceased were standing in Raza Chowk, Roshanbagh, Nagpur co-accused Parvez Yakub Khan came there and

there was altercation of the words between them. Thereafter, in the midnight when informant and deceased were chit-chatting, the applicant along with other four persons came and assaulted the deceased Parvez Sheikh Papamiya Sheikh. In the FIR as well as in the statement of the eye witness recorded under Section 164 of Cr. P. C., the description of the unknown persons are not given by the witnesses. They are identified during the identification parade by the witnesses. As per the statement under Section 161 of Cr.P.C. the eye witnesses alleged that the unknown persons were also holding the knife in their hands. But in Section 164 of Cr.P.C. statement only role attributed to one of the unknown person is that he caught hold the hands of the informant. Thus, during the investigation and the statement under Section 164 Cr.P.C. no role is attributed to the present applicant by the eye witnesses. The informant has assigned the role to one of the accused who is unknown only to the extent that he caught hold the hands of the informant. Thus, considering the material collected during the investigation, except the identification parade, there is no material to connect the present applicant with the alleged offence. However, at this stage, I am restraining myself from making any comment on the nature of the evidence which is collected during the investigation. Considering the inconsistency in the statements recorded under Section 161 and 164 of Cr.P.C., investigation is completed.

Nothing is recovered at the instance of the present applicant and in view of the statement under Section 164 of Cr.P.C. no allegation is that the unknown persons have assaulted by means of knife. The application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Abdul Faizal @ Immu Abdul Salim Shaikh**, in connection with Crime No.125/2023, registered with Police Station, Tahsil, District Nagpur for the offence punishable under Section 143, 147, 148, 302, 201 and 120-B read with Section 149 of the Indian Penal Code, be released on bail on furnishing PR bond in the sum of Rs.30,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter in the village Kharbi, Police Station Wathoda, Nagpur till the culmination of the trial.
- (iv) The applicant shall furnish his cell phone number and address with address proof before the Investigating Officer.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(6)

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

(URMILA JOSHI-PHALKE, J.)

Sarkate