



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

CRIMINAL APPLICATION (BA) NO.649 OF 2024

(Sartaj s/o Ijhar Khan 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.K. Bhangde, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 12, 2024.

By this application, the applicant is seeking bail as he was arrested on 31/05/2024 in connection with Crime No.165/2024 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 399 of the Indian Penal Code, Sections 25(3) and 25(4) of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act.

2. As per the allegation on 30/05/2024 at around 10.10p.m. a phone call was received by the investigating agency from one Naresh Alsawar that near Disney Land English Medium School some suspected persons were found roaming and the people have hold three of them whereas other persons accompanying them have fled away by a four wheeler vehicle. Accordingly, investigating agency reached at the spot and took the custody of three suspected persons. During the search of said other co-accused the applicant was found in possession of country made pistol having live cartridge.

The other two persons were also found in possession of weapons. On inquiry with the persons they stated that they did not possess any license for possession of the said weapons. Accordingly, they were taken into custody. They were also with chilly powder. Therefore, they are taken into custody.

3. Learned Counsel for the applicant submitted that mere assembling by some persons having weapon in their hand is not sufficient to held that they were preparing for committing the dacoity. He submitted that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In support of his contention he placed reliance on *Chaturi Yadav and ors. Vs. State of Bihar [(1979) 3 SCC 430]* wherein the Hon'ble Apex Court held that some of the persons were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 a.m. does not, by itself, prove the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. He submitted that similar is the fact in the present case. Merely because they found in possession of some weapons is not sufficient to held that they were preparing for dacoity.

4. Learned APP strongly opposed the application on the ground that during investigation the weapons are seized from the present applicant and other co-accused

and the preparation by the present applicant and other co-accused is established on the basis of the statements of the various witnesses. If they are released they would indulge themselves in the similar type of the activities. 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 three co-accused were caught by the public who were gathered there and the present applicant arrested subsequently holding weapon in his hand. Now investigation is already completed and charge-sheet is also filed. In view of the observation of the Hon'ble Apex Court that itself is not sufficient to attack the provisions under Section 399. However, considering now further incarceration is not required, the applicant has made out a case for grant of bail. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Sartaj s/o Ijhar Khan in connection with Crime No.165/2024 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 399 of the Indian Penal Code, Sections 25(3) and 25(4) of the Arms Act, 1959 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 attend the concerned police station twice in a month i.e. 1st and 15th day of every month and the Police Officer shall record his presence. The applicant shall cooperate with the investigating agency.

(iv) The applicant shall not enter into the vicinity of village Chamorshi, District Gadchiroli till the culmination of the trial.

(v) The applicant shall not indulge in the similar type of the activities.

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

(vii) The contravention of any of the condition imposed on the applicant would lead to the cancellation of bail.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)