

(2021) 11 BOM CK 0127
In the Bombay High Court
Case No : Bail Application No.3304 Of 2021

Masood Khan Kamal Khan

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 143, 147, 148, 149, 307, 323, 326
Arms Act, 1959 — Section 3, 4, 5, 25, 27
Maharashtra Police Act, 1951 — Section 37(1), 37(3), 135

Citation : (2021) 11 BOM CK 0127

Hon'ble Judges : V.G.Bisht, J

Bench : Single Bench

Advocate : Yasin Kapadia, Anamika Malhotra

Final Decision : Allowed

Judgement

V. G. Bisht, J

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.I-03 of 2021 registered with Police Station Malegaon City, Nashik, for offences punishable under Section 307, 326, 323, 143, 147, 148, 149 and 120B of the Indian Penal Code (IPC), under Section 3/25, 5/27 and 4/25 of the Arms Act and under Section 37(1), 37(3) and 135 of the Maharashtra Police Act.

2 On 14th January 2021, while the informant was chitchatting along with his friends near Hotel Taj in his locality, accused namely Sayeed @ Ganjawala (A-1), Masood Ganjawala (A-2 - present applicant), Firoz Gangawala (A-3), Zahid Ganjawala (A-4), Moin @ Kalya (A-5), Imran Shaha Gaffar Shah (A-6), Ishtiyak Ahmed Mohd. Mustafa (A-7), Sayyed Danish Sayyed Ismail (A-8), Abdul Hasim Iqbal Mohd. (A-9) and Salman Mohd Salim (A-10) came on the motorcycle. They all were armed with weapons. The applicant was armed with a pistol. The prosecution alleges that accused had come with a view to kill the informant. The

prosecution further alleges that the applicant then took out pistol and brandished at him. However, the applicant pushed his hand and ran towards the other side crossing the Old Agra Road. However, all the accused chased him and fired at him in which the applicant sustained fire shot on his right calf. Accused Moin @ Kalya also fired. The informant was also assaulted by Imran Shaha Gaffar Shah by means of a sword on his back. Somehow, the informant reached the police station from where he was taken to Civil Hospital, Malegaon, for treatment. Accordingly, informant lodged the report.

3 Mr.Kapadia, learned counsel for the applicant, submits that nine accused have already been admitted on bail. The learned counsel then invited my attention to the Medico Legal Certificate pertaining to the informant and pointed out that since the informant was discharged from the hospital immediately, the injuries allegedly sustained cannot be termed as grievous injury. The charge-sheet has already been filed. The trial may take its own time and in such circumstances, the applicant deserves to be enlarged on bail.

4 Smt.Anamika Malhotra, learned APP, on the other hand, submits that the informant has elaborately given the role of each and every accused including the applicant. The learned APP also invited my attention to the injury certificates pertaining to the informant and submitted that having regard to the seriousness of the offence, the applicant does not deserve to be released on bail.

5 Perused the investigation papers. From the First Information Report (FIR) it is seen that the applicant had fired from pistol which had hit on the right leg calf of the informant. I have also gone through the Medico Legal Certificate which shows that there was gun shot injury over right knee with entry wound poster medial to patella with multiple CLWs over back. It is certified that the injury was grievous. However, there is certificate issued by Dr.Parang Sanghavi, Consultant Radiologist of Unity Health. The said certificate is of 15th January pertaining to the informant which says that a foreign body / bullet was seen in the subcutaneous soft tissue along(photocopy not legible) aspect of right knee medial to the medial femoral condyle with surrounding soft tissue swelling and fat stranding. Lastly, the impression given by the concerned doctor is "A foreign body / bullet is seen in the subcutaneous soft tissue medial to the medial femoral condyle with surrounding soft tissue swelling and Mild joint effusion is seen. No fracture or dislocation is seen."

6 From the impression gathered by the concerned doctor it is clear that there was no fracture or dislocation. This being so, the injury, prima facie, cannot be termed as grievous injury as is reflected through Medico Legal Certificate issued by Civil Hospital, Malegaon.

7 Assuming for the sake of argument that the applicant had participated in the offence, however, having regard to the nature of injuries as noted hereinabove, and the fact that no criminal antecedents are forthcoming, in my considered opinion, further custody of the applicant is unwarranted.

8 In view of above, I am inclined to allow the application. Hence, I pass the following order :

ORDER

(i) Applicant - Masood Khan Kamal Khan shall be released on bail in Crime No.I-03 of 2021 registered with Police Station Malegaon City, Nashik, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the concerned police station as and when called by the Investigating Officer.

(iv) Bail before the trial Court.

(v) Parties to act on copy of this order duly authenticated by the Sheristadar of this Court.

(vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.