

MHGA010005032022



IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GADCHIROLI.

(Presided over by A. S. Pandharikar)

Sessions Case No. 63/2022

Crime no. 18/2022

Applicant : Nikesh Madhukar Undirwade
Age: 33 yrs., Occupation : Labour
R/o : Yerkad, Tah.Dhanora,
Dist. Gadchiroli

..Versus..

Non-applicant : State of Maharashtra
Through A.P.O. Yerkad, P.S.Dhanora,
Tah. Dhanora, Dist. Gadchiroli.

ORDER BELOW EXH.3

(Passed on this 18th day of November, 2022)

1] By moving this application u/s 439 of Cr.P.C. applicant seeking relief of bail.

Brief facts of the case.

2] On 1.3.2022 informant/victim Rakesh Raju Usendi stated in his statement that he resides with his parents and elder brother together. On 28.2.2022 in the evening, he was talking with his uncle Dilip Wadde in the village square. At that time, applicant/ accused Nikesh under the influence of liquor came there and asked him " I had given you a mobile, return it. Informant said that " You had not given

a mobile to him, I have my mobile".

3] At that time, applicant/accused took out the knife from his pant pocket and assaulted the knife on his stomach and fled from the spot. Thereafter, his uncle and villagers took him to General Hospital Gadchiroli for medical treatment. Thereafter, on 01.03.2022 the AOP Yerkad, P.S.Dhonora has registered the offence punishable u/s 307 of IPC against the applicant/accused.

4] Applicant/accused has come with the case that the informant himself assaulted the applicant/accused twice on the day of incident. It is contended that while he resisting in his defence, during scuffle, the informant got injured. Further it is contended that he also lodged the report before the non-applicant, however, the non-applicant has not taken his report but registered the false alleged an offence against him. Further it is contended that he has been falsely involved in the present crime. Further it is contended that applicant having no nexus with the alleged offence. Applicant is peace loving people and law abiding person in the society.

5] On the other hand prosecution has come with the case that the applicant is the person who has committed the present crime. Accused /applicant and eye witnesses are residing in the same village. Further it is case of prosecution that if the applicant is released on bail the possibility of tampering with the prosecution witnesses/ evidence can not be ruled out.

6] I have heard learned advocate for applicant and learned APP for State. Ld. advocate for applicant submitted in the line of

application and prayed for relief. On the other hand, learned APP, contended that if the applicant is released on bail, the applicant/accused will tamper prosecution witnesses/ evidence. Ultimately ld.A.P.P. prayed for rejection of application.

7] Taking into consideration facts of the case, rival submissions made at bar and taking into consideration the gravity of offence and more particularly it is held by Hon'ble Apex Court in several cases that what is to be considered while granting the bail is that whether presence of accused can be secured for trial or not that is to be considered. In the present case, applicant residing in the territorial jurisdiction of the concerned Police Station. Applicant is permanent residence of the address mentioned in the application. Nothing is to be recovered or discovered at the instance of accused. Accused is ready to abide by any terms and conditions.

8] Generally, it is the rule to allow the bail rather than refuse it. In law, it is presumed that an accused of a crime is innocent till his guilt is proved. Therefore, in a given case, an opportunity must have been accorded to accused who is in jail, to look after his own case. In a case of ***"G. Narasimhulu Versus Public Prosecutor (AIR 1978, S.C. 429)"***, the Hon'ble Supreme Court held that,

"The requirement for bail is merely to secure the attendance of the prisoner for trial and it is the duty of the court to admit the accused to bail, wherever practical, unless there are strong grounds for supposing that such persons would not appear to take the trial".

9] Hence, on the basis of aforesaid observations, it will not be just and proper to keep accused behind bar. Accused/applicant is in MCR since long. Investigation is completed and filed Charge-sheet. Therefore, applicant/ accused is entitled for bail on following terms and conditions. Hence, I proceed to pass following order :

ORDER

- 1] Criminal Bail Application Exh 3 is hereby allowed.
- 2] Accused/ applicant namely Nikesh Madhukar Undirwade, arrested in Cr.No.II-18/2022 of AOP Yerkad, Dhanora Police Station, for the offence punishable under Sections 307 of the Indian Penal Code is hereby released on bail on executing PR and SB of Rs.25,000/- with one solvent surety or two sureties in like amount on following conditions :
 - a] Applicant/accused is directed not to tamper with prosecution evidence.
 - b] Applicant/accused is directed to furnish his permanent residential address with proofs.
 - c] Applicant/accused shall not commit an offence similar to the said offence in the future.
 - d] Breach of any condition by applicant/ accused shall result in cancellation of bail.
- 3] Inform concerned Police Station accordingly.

Dt:-18/11/2022

sd/-
(A.S. Pandharikar)
Ad-hoc District Judge-1 &
Addl. Sessions Judge, Gadchiroli.