

Sessions Case No. 147 of 2019*The State Vs. Shakil Akbar Qureshi***Order Below Exh.13.**(Passed on 16th November, 2022)

1) The applicant / accused Shakil Akbar Qureshi, resident of Islam Nagar, Tal. Ita, Dist. Kasganj (Uttar Pradesh) has preferred second application, after filing of charge-sheet, under Section 439 of the Criminal Procedure Code for grant of bail in Crime No. 60/2019 registered at Chandwad Police Station, Dist, Nashik against him for the offences punishable under Sections 307, 397, 459, 506 read with Sec. 34 of the Indian Penal Code (Sessions Case No.147 of 2019).

2) It is the case of the prosecution that informant Navnath Karbhari More, resident of Khaiswadi Vasti, Chandwad, in the field of Dr. Prakash Trambak Kabade, was admitted at Sub-District Hospital, Chandwad on 05/05/2019. Police recorded his statement in the hospital wherein he has stated that on 04/05/2019 in the night at about 08.30 p.m. after having dinner, he was sitting on the cot in the court yard of his house alongwith his son Samadhan. His wife Nanda was working in the house, at that time, 4 unknown persons between age group of 25 to 35 came there. One of them came near and show knife in his hand and asked the informant and his son not to make noise otherwise they will kill them. They asked the informant to call her wife to open the door of house. Accordingly, the informant called his wife. Thereafter, the accused took them in the

house and started switching off the lights, therefore, the informant and his family members started shouting and called neighbours Gorakh Barkale, Prakash Wajdev and Santosh Ahire. At that time, one of them wearing half pant gave blow of knife on the head of the informant and tried to kill him. Therefore, he fall down. Blood was oozing from his head. One of the accused bring spade (माळ पावडा) lying on the platform of the house and gave its blow on the head of Samadhan. Therefore, Samadhan also sustained injuries. Wife of the informant Nanda frightened and started shouting, therefore, Prakash Wajdeo and Santosh Ahire rushed to the spot of incident with torch. They asked the said unknown persons who are they. In the scuffle, the said persons gave blows of knife on the hands of Santosh Ahire and Prakash Wajdeo. Due to shouting of the informant and other persons, the said persons started running towards Shinde Vasti. The informant and others tried to chase them but failed to do so. On the basis of said complaint, above-said crime came to be registered against unknown persons. It is further case of the prosecution that the injureds were admitted at Government Hospital, Chandwad where accused Shakil Akbar Qureshi was also admitted. One other person, by name Abhiman Shivdas Pawar died. It revealed that other accused were Manohar Dilip Kale, resident of Bodhegaon, Tal. Shevgaon and Ganesh @ Ganya Varjya Bhosale, resident of Vadji, Tal. Paithan. After completing the investigation, charge-sheet has been filed against the accused in the Court.

3) Learned advocate for the accused / applicant vehemently submitted that the accused is falsely implicated in this crime. There is no evidence at all against the present applicant / accused. Nothing was stolen and nothing is seized from the present applicant / accused. No TI Parade is conducted. The accused is in jail since 19/05/2019 i.e. for about 3-1/2 years. Other accused persons are absconding. Trial is not yet commenced. No charge has been framed against accused till today. Other accused i.e. Ganesh @ Ganya Varjya Bhosale is released on bail by the Hon'ble High Court vide order in Bail Application No. 3803 of 2021 dated 19/04/2022, i.e. after rejection of first bail application of the present applicant / accused. Therefore, there is a change in the circumstances. Therefore, on the grounds of parity, present applicant / accused is also entitled to be released on bail. Mere fact that the accused is residing in other State, cannot be the ground to refuse bail to him. Present applicant / accused cannot be kept behind the bars for indefinite period. Investigation is against present accused is completed and charge-sheet has been filed in the Court. As other accused person is still absconding, trial is not likely to commence in near future. The accused has no criminal antecedents. His further detention behind the bars will amount to pre-trial conviction. He is ready to abide conditions of bail. Therefore, he prayed to grant bail to the accused.

5) On the other hand, learned APP resisted the application on the ground that the accused has committed a serious crime of

robbery and has caused injuries to the informant and other persons while committing the crime. There is no change in the circumstances after rejection of his first bail application. Prima facie case is made against accused. The accused may tamper with the prosecution evidence and may abscond, if released on bail. Therefore, he prayed to reject the application.

6) Upon hearing the learned Advocate and on perusal of charge-sheet, it appears that present applicant / accused is arrested on 19/05/2019. Since then, he is in jail. His first bail application after filing of charge-sheet was rejected on 16/07/2021. There is a substance in the arguments of learned Advocate for the accused that investigation of the crime against present applicant /accused is already completed, he cannot be kept behind the bars for indefinite period waiting for arrest of other absconding accused persons.. There is also substance in the arguments of learned Advocate for the accused that as the other accused persons are absconding, there is no likelihood of commencement of trial in near future. No T.I. Parade is conducted during the investigation. Co-accused Ganesh @ Ganya Varjya Bhosale booked in the offence is already released on bail by the Hon'ble High Court, vide order in Bail Application No. 3803 of 2021 dated 19/04/2022, i.e. after rejection of first bail application of the present applicant / accused therefore, on the grounds of parity also, present applicant / accused is entitled to be released on bail. While passing the said order the Hon'ble Lordships observed that, name of the applicant is not mentioned in the FIR. Though the

accused persons were unknown to the informant and other witnesses, no TI Parade is conducted, therefore, there is no incriminating material at all against the accused. Role of the present applicant / accused is also same as of accused Ganesh @ Ganya Varjya Bhosale. The Hon'ble Apex Court in **Motiram Vs. State of M.P. - AIR 1978 SC 1594** has categorically ruled that residence of accused is not material, bail cannot be refused for the reason that the accused is residing in another State. No condition can be imposed on the accused to furnish surety from a particular district or place. There is substance in the arguments of learned Advocate for the applicant that due to absence of other accused persons, there is no likelihood of commencement and early completion of trial. Under these circumstances, there is no need to keep the present applicant / accused behind the bars for indefinite period. At the same time, presence of the accused for trial is required to be secured. Considering all the facts and circumstances on record, I come to the conclusion that the application deserves to be allowed. Therefore, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) Accused / applicant Shakil Akbar Qureshi, resident of Islam Nagar, Tal. Ita, Dist. Kasganj (Uttar Pradesh) be released on bail on furnishing PR bond sum of Rs. 20,000/- (Rupees twenty thousand only) and one

solvent surety of like amount in connection with Crime No. 60/2019 registered at Chandwad Police Station, Dist, Nashik against him for the offences punishable under Sections 307, 397, 459, 506 read with Sec. 34 of the Indian Penal Code.

3) Applicant / accused shall attend the trial regularly and shall not tamper with the prosecution witnesses in any way and in any manner, in-default, his bail is liable to be cancelled.

4) P. & D. in the open Court.

Sd/-

(A.V. Gujarathi)

Additional Sessions Judge,
Niphad.

Date : 16/11/2022.