

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

Criminal Application No. 5954 of 2016

District : Aurangabad

Ratansingh s/o. Balamsingh Bist,
Age : 45 years,
Occupation : Business,
R/o. A-4, RH-3, Sai Sagar,
Co.Op. Housing Society, N-1,
CIDCO, Aurangabad.

.. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Police Station, MIDC, CIDCO,
Aurangabad.

.. Respondent.

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*Ms. Monica Dahat, Advocate, holding for
Mr. Swapnil S. Patil, Advocate, for the applicant.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for the
respondent.*

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CORAM : A.M. BADAR, J.

DATE : 25TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 507/2015 registered with MIDC CIDCO Police Station, Aurangabad, for offences punishable under Sections 307, 504, read with Section 34 of the Indian Penal

Code, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. She argued that the applicant, who has set the criminal law in motion by lodging the FIR, is falsely implicated in subsequent offence by accused persons against whom the applicant lodged report. The learned Counsel further drew my attention to the order passed by this Court in Criminal Application No. 1894 of 2016 on 12.04.2016 and submitted that informant Bhagwan Ragade against whom the present applicant had lodged a FIR, had approached this Court for seeking pre-arrest bail in the FIR of the present applicant, but this Court was pleased to reject that application with an observation that informant Bhagwan Ragade had an audacity to assault the present applicant in the Police Station and the same fact is also reflected from the FIR lodged by the present applicant against informant Bhagwan Ragade. Therefore, in submission of the learned Counsel for the applicant, the applicant is falsely implicated in the crime in question in order to take revenge of the fact that the applicant has lodged a FIR against the informant.

3. The learned Addl. Public Prosecutor opposed the application by contending that complicity of the present applicant in the crime in question is

established by two witnesses namely, Kirpalsing Chas and Charanjitsing Chas. The learned Addl. Public Prosecutor further argued that the provisional injury certificate of informant Bhagwan Ragade shows that he has suffered injuries in the nature of blunt trauma and abrasions and therefore one cannot say that the applicant is falsely implicated in the crime in question.

4. I have carefully considered the rival submissions and also examined papers of investigation.

5. Applicant Ratansingh s/o. Balamsingh Bist is seeking pre-arrest bail in Crime No. 507/2015 registered with MIDC CIDCO Police Station, Aurangabad, at the instance of informant Bhagwan Ragade. The FIR of this crime was registered on 31.12.2015 at about 09.09 p.m. The same was lodged against four unknown persons. According to informant Bhagwan Ragade, who happens to be an Ex-Coporator, on 30.12.2015 at about 08.00 p.m. to 08.30 p.m., he came near Prozone Square on his motorcycle. He saw 4 - 5 persons standing at that place and one from them was firing pallets from the air-gun. Informant Bhagwan Ragade took exception to this fact. As per his version, then two persons alighted from four wheeler vehicle of Skoda make. One of them was holding sword whereas another was holding a hockey stick. The

informant was given blow by hockey stick on his head. Informant Bhagwan Ragade further alleged that a person who was firing pallets from the air-gun then gave a fist blow on his nose by a fighter. Thereafter one woman who was with them gave a blow of stump on his head.

6. Though offence registered against the present applicant is punishable under Section 307 of the IPC, one will have to see whether prima facie such offence is made out. The learned Addl. Public Prosecutor has submitted that the informant has suffered blunt trauma and abrasions which are minor in nature. Nature of injury, seat of injury as well as weapons used are material in determining intention as well as knowledge of accused persons. Though allegations are that sword was with accused persons, it is seen that informant Bhagwan Ragade has not suffered any injury which may be attributable to sword. This by itself prima facie reflect that there was no intention to commit murder of informant Bhagwan Ragade. Injuries suffered by him in the alleged incident are simple in nature. As such prima facie, offence punishable under Section 307 of the IPC is not made out against the applicant.

7. Be that as it may, record shows that present applicant Ratansingh Bist had lodged report against present informant Bhagwan Ragade at about 05.00 a.m.

of 31.12.2015. Applicant Ratansingh Bist, who is informant in that Crime No. 503/2015 registered on 31.12.2015 against present informant Bhagwan Ragade and three other co-accused, alleged that beside his rented house there is eatery by name Sayba Snacks owned by Kapalsing Chas and managed by Kapalsing as well as his son Charanjitsing. These two persons appears to be witnesses in Crime No.507/2015 registered against the present applicant. They are accused in Crime No. 503/2015 registered at the instance of the present applicant. According to present applicant Ratansingh Bist, the incident took place on 30.12.2015 at about 09.30 p.m. As per his version reflected from Crime No. 503/2015 lodged by him, customers of Saheba Snacks always create scene in the vicinity after consuming liquor and they used to urinate in front of his tenanted house. At about 09.30 p.m. of 30.12.2015, he saw four persons urinating in front of his house and therefore he questioned those persons and asked as to why they used to urinate at that place. Thereafter one of them gave s stroke to him resulting in his fall on the motorcycle. Those persons then left the spot and one of them entered into Saheba Snacks. Therefore applicant Ratansingh Bist followed them. At that place, as per version of applicant Ratansingh Bist, Bhagwan Ragade (informant herein) and Kadarbhai came outside. Bhagwan Ragade slapped on his ear causing bleeding from his ear and as such he fell down.

Thereafter he was assaulted by means of fist and kick blows by Bhagwan Ragade, Kadarbhai, Kapalsing and Charanjitsing. As per version of applicant Ratansingh Bist, his wife and sister came to rescue him and in order to protect his wife and sister, he ran towards the house, took out an air-gun and fired pellets from that air-gun in air.

8. When this FIR of applicant Ratansingh Bist was being registered and request letter was being issued to the Medical Officer, Bhagwan Ragade (informant herein) came to the Police Station and again assaulted applicant Ratansingh Bist before Police Officers. This fact is noted by this Court while rejecting similar application of Bhagwan Ragade and the same is also reflected from the FIR lodged by present applicant Ratansingh Bist against Bhagwan Ragade and three other co-accused.

9. The net result of these events prima facie shows that initially informant Bhagwan Ragade assaulted present applicant Ratansingh Bist causing bleeding injury to his ear. Other co-accused had also assaulted Ratansingh Bist and in order to save himself and his family members from assault by informant Bhagwan Ragade and his associates, applicant Ratansingh Bist used air-gun for saving himself and his family members by firing pellets in the air. Then he was assaulted again at the Police

Station when he tried to take recourse to law. Thereafter with due deliberation it appears that accused Bhagwan Ragade in the crime registered at the instance of the present applicant had lodged FIR against the present applicant. Witnesses in the FIR of Bhagwan Ragade are accused in the FIR registered first in time by the present applicant. Prima facie false implication of the present applicant in the crime in question is disclosed from the sequence of events which took place and reflected in official record.

10. In this view of the matter and considering injuries allegedly suffered by informant Bhagwan Ragade, custodial interrogation of the present applicant is not warranted.

11. Hence, I pass the following order :-

(a) The Application is allowed.

(b) Applicant Ratansingh s/o. Balamsingh Bist, in the event of his arrest in Crime No. 507/2015 registered with MIDC CIDCO Police Station, Aurangabad, for offences punishable under Sections 307, 504, read with Section 34 of the Indian Penal Code, be released on bail on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant / accused shall abide by the following directives :-

(i) The applicant shall attend the concerned Police Station on 5th November 2016 in between 11.00 a.m. and 01.00 p.m. and he shall cooperate the investigator in investigation of the crime in question.

(ii) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

(d) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

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