

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6155 OF 2016

Mauli @ Dnyaneshwar Shahdeo Zarange,
 Age : 35 years, Occu.: Agri.,
 R/o. Kusalam, Tq. Patoda,
 Dist. - Beed .. Applicant

Vs.

The State of Maharashtra,
 Through Police Station Officer,
 Jamkhed Police Station,
 Tq. Jamkhed,
 District : Ahmednagar .. Respondent

AND
CRIMINAL APPLICATION NO. 6156 OF 2016

Mahendra S/o Govindrao Garje,
 Age : 37 years, Occu.: Agri.,
 R/o. Mahasangvi, Tq. Patoda,
 Dist. - Beed .. Applicant

Vs.

The State of Maharashtra,
 Through Police Station Officer,
 Jamkhed Police Station,
 Tq. Jamkhed,
 District : Ahmednagar .. Respondent

Mr. N.V. Gaware, Advocate for the applicant (6155/2016)

Mr. R.S. Deshmukh, Advocate h/f Mr. N.V. Gaware, Advocate for the applicant (6156/2016)

Mr. R.V. Dasalkar, APP for the respondent/State in both Applications

Mr. N.S. Tekale, Advocate to assist A.P.P.

CORAM : A.S. CHANDURKAR, J.
DATE : 02/12/2016

ORAL ORDER :

Heard.

2. Since applicants in both the Applications seek their release on bail under Section 439 of the Code of Criminal Procedure, pursuant to their arrest on 16/10/2016, in connection with Crime no.I-138 of 2016 registered at Jamkhed Police Station, Dist. Ahmednagar for the offences punishable under Section 307, 395, 143, 147, 148, 149 of the Indian Penal Code and read with Section 4/25 of the Arms Act, under Section 37(1)(3) r/w. Section 135 of the Bombay Police Act and under Section 3 of Public Property Damages Act, 1984, these Applications are being decided by this common order.

3. As per the FIR lodged by one Bhagwat S. Murumkar, it has been stated that on 29/8/2016, a no-confidence motion that was moved against members of Nahuli Grampanchayat was to be considered. For said purpose, the informant had been there. The motion of no-confidence came to be duly passed. When the informant was returning back at 5:30 pm, he was assaulted near the house of the Chairman of the

Panchayat Samiti by a mob of about 100-150 persons, including the present applicants. According to the informant, his gold chain and two rings were removed forcibly and some vehicles were also damaged. In the said report, applicant – Mahendra Garje was stated to have assaulted the informant by a stone, while applicant – Mauli Zarange was stated to have assaulted the informant by an iron rod on both his legs. On that basis, FIR no.I-138 of 2016 came to be lodged. This crime was registered at 23:28 hours on 29/8/2016. Pursuant thereto, both the applicants came to be arrested on 16/10/2016.

4. Shri Deshmukh, learned counsel for applicant – Mahendra Garje submitted that the alleged dispute arose out of the political rivalry. Pursuant to the motion of no-confidence being passed, the members of the other group were agitated. The alleged altercation has resulted in lodging of two reports. According to him, though the group of which the applicant was a member, had gone for lodging their report, the same was not accepted and it was registered subsequently as FIR No. I-140 of 2016. According to him, question of provisions

of Section 307 of the Indian Penal Code being attracted, does not arise considering the simple injury suffered by the informant. Though, the applicant was arrested on 16/10/2016, no recovery was effected from him. He referred to the entire incident as being politically motivated and submitted that investigation was not done in a fair manner and was done only with a view to implicate the present applicant. In absence of any allegations with regard to theft against the applicant or any life threatening injuries being sustained, the applicant deserves to be enlarged on bail. It was pointed out that the applicant was stated to have criminal antecedents as recorded by the learned Judge of the Sessions Court in the order rejecting the bail application. However, the applicant had been acquitted in two of the offences and in the third offence, he had been released on bail.

5. Shri Gaware, learned counsel for the applicant – Mauli Zarange, submitted that pursuant to applicant's arrest, alleged iron rod is shown to have been recovered from him. The informant had suffered only simple injuries. He submitted that the Investigating Officer

had sought to delete the offence insofar as Section 395 and Section 307 of the Indian Penal Code are concerned from FIR no.I-140 of 2016, by observing that there was no evidence in that regard. Same was the situation also in respect of the present crime. He also submitted that as per the Investigating Officer, the present offence registered vide crime no.I-138 of 2016 had occurred after the offence in crime no.I-140 of 2016 had taken place. Learned counsel therefore submitted that considering the stand of the Investigating Officer that the present report had been lodged subsequently and that the entire matter arose out of political disputes, the present applicant was entitled to be released on bail.

6. The applications were opposed by learned Additional Public Prosecutor by relying upon the police papers. Similarly, the informant – Bhagwan Murumkar also assisted the prosecution through his learned counsel. It was submitted that the material on record indicated presence of both the applicants. While applicant – Mahendra Garje had assaulted the complainant with a stone, applicant – Mauli @ Dnyaneshwar Zarange had assaulted him with an iron rod. Though the injuries

sustained by the informant were simple in nature, the provisions of Section 149 of the Penal Code stood attracted as there was common intention on the part of the persons present of grievously assaulting the informant. Reference was made to the antecedents of the applicants to submit that they were not entitled for such release. Learned counsel for the informant submitted that if the applicants were enlarged on bail, there was likelihood of threats being given to the witnesses and hence the applications were liable to be rejected.

7. I have perused the FIR as well as the police papers. The material on record indicates that the incident in question is dated 29/8/2016 in which two groups belonging to different political parties had clashed after the no-confidence motion at the Panchayat Samiti was passed. This fact is clear on perusing both the FIRs. If the request letter by the Investigating Officer to the Judicial Magistrate First Class dated 3/9/2016 is perused, it can be seen that according to the Investigating Officer, crime no.I-138 of 2016 in which the applicants are accused had occurred after

crime no.I-140 of 2016 took place. It is then stated that the dispute appeared to be between two rival political groups and the crimes registered under the provisions of Section 307 and 395 of the Penal Code as well as under the Arms Act did not appear to have been committed. On that basis, said Sections were sought to be deleted. Thus, even according to the Investigating Officer, present crime no.I-138 of 2016 has taken place after crime no.I-140 of 2016 had taken place.

8. Applicant – Mahendra Garje is stated to have assaulted the informant with a stone while applicant – Mauli @ Dnyaneshwar Zarange is stated to have assaulted the informant with an iron rod. If the report of the Medical Officer dated 29/8/2016 is perused, it indicates simple injuries on the body of the informant. He was treated in the out-patient department. It is thus clear that *prima facie*, offence under Section 307 of the Penal Code does not appear to have been committed considering the simple injuries suffered by the informant. In any event, the assault with sword is by one Ashok @ Rohidas Shelke, who is not before this Court.

9. The applicants were arrested on 16/10/2016. While there was no recovery from applicant – Mahendra Garje, an iron rod has been recovered from applicant – Mauli @ Dnyaneshwar Zarange. Nothing further remains to be seized. In aforesaid facts, it is prima facie found that the dispute between two groups had arisen out of the political rivalry. Even according to the Investigating Officer, the offences were of technical nature. The seizure of the iron rod has also been effected. As regards antecedents of applicant – Mahendra Garje, he has been acquitted in two cases and has been released on bail in the third case. In the facts of the present case, appropriate conditions can be imposed while enlarging the applicants on bail.

10. In view of aforesaid discussion, the following order :-

ORDER

I) The applicants, who have been arrested pursuant to Crime no.I-138 of 2016 registered at Jamkhed Police Station, Dist. Ahmednagar for the offences punishable under Section 307, 395, 143, 147, 148, 149 of the Indian Penal Code and read with Section 4/25 of the Arms Act,

under Section 37(1)(3) r/w. Section 135 of the Bombay Police Act and under Section 3 of Public Property Damages Act, 1984, are directed to be released on bail, upon furnishing P.R. bonds of Rs.20,000/- (Rs. Twenty Thousand) and one surety in the like amount, by each of them.

II) The applicants shall not enter Jamkhed Tehsil, District – Ahmednagar, till filing of the chargesheet.

III) The applicants shall co-operate with the investigation and attend the concerned Police Station, as and when directed.

IV) No steps shall be taken by the applicants to influence the prosecution witnesses.

11. Observations made in this order are only for deciding the bail Applications. The Criminal Applications are accordingly allowed and disposed of.

Sd/-

[A.S. CHANDURKAR]
JUDGE

arp/