

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

921 CRIMINAL APPLICATION NO. 1956 OF 2017

SANTOSH @ NARAYAN SHAMLAL BAMNE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. A.K. Bhosale
APP for Respondent/State : Mr. A.D. Namde
Advocate for assisting APP : Mr. S.G. Ladda
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CORAM : T.V. NALAWADE, J.
DATED : May 3, 2017.

ORDER :

1. The application is filed for bail. Both the sides are heard. A statement was made by the learned counsel for the applicant that this is the first application filed for bail by the applicant in this Court. Papers of investigation were made available for perusal of this Court.

2. The crime is registered on the basis of report given by Prakash Bamne on 30.9.2016 in Harsool Police Station for the offences punishable under sections 307, 326 r/w. 149, 201 etc. of I.P.C. He is injured and working as Jail Constable. According to the first informant, the incident in question took place on 27.9.2016. According to him, on that date at about 9.00 p.m., he was proceeding towards Harsool on his motorcycle and when his

motorcycle was present at some distance from Harsool octroi check post, two persons intercepted his motorcycle by showing their hands. According to him, he realised that they were his uncle Shamlal Sitaram Bamne and Kiran Shamlal Bamne, son of Shamlal. According to him, within no time, two more motorcycles came to the spot and on one of the motorcycle, other son of Shamlal namely Santosh came there with other accused and there were three unknown persons in the company of present applicant. He has contended that Santosh picked up quarrel with him on the count that in the previous year, the first informant had picked up quarrel over the space of tethering cattle. He has contended that Santosh then gave blows of axe on his two hands and caused him injuries. According to him, when he collapsed, his uncle Shamlal assaulted him by weapon like wooden log and others assaulted him with fist blows and kicks. According to him, when one unknown person stopped at the spot and started shouting, these persons went away. According to him, after some time, some persons from his village and his maternal uncle Wani came there and they shifted him to GHATI Hospital, Government Hospital, where he became unconscious. It appears that during treatment his right hand was imputed from shoulder.

3. When the incident took place on 27.9.2016, the F.I.R.

was given on 30.9.2016. The contents of the F.I.R. show that he had become unconscious only when he was reached to the hospital and he was conscious when his maternal uncle Wani reached on the spot and when the persons of his village went to the spot. These circumstances will be always required to be kept in mind, during trial also.

4. There is record showing that the first informant was first taken to Civil Hospital where information was given that it was the case of road traffic accident which had taken place at Harsool Naka at about 9.30 p.m. The hospital described the injury as crush injury over right arm and left shoulder. He was shifted from this hospital at about 10.30 p.m. to private hospital viz. M.G.M. Hospital. The M.L.C. prepared by the M.G.M. Hospital at 11.30 p.m. shows that information was given to this hospital that it was the case of motor vehicle accident and two wheeler vehicle was involved in the accident. This information was supplied by maternal uncle of the first informant to the hospital and his surname is Wani. This circumstance is important in view of the contents of the F.I.R. which are already quoted. Thus, till 30.9.2016, there was information that it was road traffic accident and first time, on 30.9.2016, the F.I.R. was given to the effect that the first informant was assaulted and particularly, by the

present applicant by using axe. It is true that one hand of the first informant was required to be imputed due to aforesaid injury. The Government Hospital has described the injury as crush injury and allegation is made that axe was used and blow of axe was given by the present applicant.

5. The statement of Sudam Paikade came to be recorded by police on 19.12.2016, after about two and half months of the date of incident and his statement shows that he had stopped at the spot and he had noticed in the light of passing vehicles that present applicant was present on the spot and one injured person was there and he was saying something to him. In the statement given under section 164 of Cr.P.C., he again changed his version and contended that he could not identify any of the person, who were assaulting the first informant.

6. The aforesaid material needs to be appreciated by the Trial Court. But, at this stage, this Court is expected to take decision as to whether present applicant can be kept in jail till the disposal of the case which is filed against him or whether bail can be granted to him. He has been behind bars since 18.10.2016. In view of the aforesaid circumstances, this Court

holds that discretionary relief needs to be given in favour of the present applicant.

7. In the result, the application is allowed. The applicant is to be released on bail on his furnishing PR and SB of Rs. 30,000/- (Rupees thirty thousand) with one solvent surety of like amount. He is not to tamper with the prosecution witnesses. He is not to commit similar offence.

[T.V. NALAWADE, J.]

SSC/