

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

CRIMINAL APPLICATION NO. 5430 OF 2017

Kishor Baburao Wagh

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. C.R. Deshpande, Advocate for applicant.
Mr. A.S. Shinde, A.P.P. for respondent - State.
Mr. Y.B. Bolkar, Advocate for Assist to P.P.

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**CORAM : V.L. ACHLIYA, J.
DATED : 08th DECEMBER, 2017**

ORDER :

1. The applicant – accused no.14 lying arrested in connection with offence u/s 307, 143, 147, 148, 149, 294, 427 of I.P.C. and section 4 r/w 25 of Indian Arms Act registered vide C.R. No. 77 of 2017 with Azad Nagar Police Station, Dist. Dhule, has preferred this application seeking release on bail.

2. Heard the learned Counsel for the applicant and the learned A.P.P. for State. Perused the copy of charge-sheet as well as the affidavit filed by the Investigating Officer and the orders passed in respect of co-accused releasing them on bail by the Sessions Court.

3. In short, it is the contention of the learned Counsel for the applicant that the applicant is innocent and falsely implicated in the case at the instance of the informant on account of previous enmity. He submits that none of them were present on spot. Informant has mentioned their names in F.I.R. to falsely implicate them in the case on account of old enmity with the applicant and his family. It is further contended that even if the allegations made in the complaint are taken to its face value, still no offence u/s 307 of I.P.C. is made out against the applicant. He submits that the complaint lodged is full of exaggeration. It is pointed out that though as per the allegation made in F.I.R. the applicant is attributed the role of assaulting informant by means of sword over his leg, but as per medical report, the informant is found to have suffered stab wound over right upper abdomen/chest and one CLW on right lower limb. By referring overall facts of the case and the injury sustained by the informant, it is contended that the incident cannot be said to be premeditated and made with an intention to kill the informant. It is further contended that the injury over the chest is attributed to co-accused – Mohit Wagh who is already released on bail by the Sessions Court. It is pointed out that out of 11 accused, except the applicant, all other accused are released on bail by the learned Sessions Court. He submits that on the ground of parity also the applicant deserves to be released on bail. The learned Counsel for the applicant further submits that the applicant is willing to abide by any condition that may be imposed in the

event of release of the applicant on bail which include not to enter into local limits of Dhule city.

4. On the other hand, the learned A.P.P. opposed the application with contentions that there is sufficient evidence to establish the complicity of the applicant in commission of offence. By referring the facts of the case, the learned A.P.P. submits that the applicant and co-accused came on the spot armed with weapons like sword which itself reflects that they had come with preparation to assault the informant and others. It is further contended that the applicant is having track record of indulging into criminal activities. As many as four cases were registered against the applicant before registration of this case. Before the incident, the persons residing in the locality had made representation against the applicant to the Superintendent of Police and other high officials. He further submits that after release of co-accused on bail, certain complaints have been received against them of threatening the prosecution witnesses. He submits that looking to the nature of offence and criminal antecedents of the applicant, the application be rejected.

5. In order to appreciate the submissions advanced, I have perused the charge-sheet and the orders passed by the learned Additional Sessions Court rejecting the application moved by the applicant and granting bail to co-accused. Perusal of the orders passed by the learned Sessions Judge reveals

that the application was rejected only for the reason that informant and others have raised strong objection to release the applicant on bail. It is pertinent to note that objection was raised in respect of release of all the accused. While dealing with Criminal Bail Application Nos. 818 of 2017, 572 of 2017 and 604 of 2017 preferred by co-accused, the learned Additional Sessions Judge has taken view that as the investigation is over, the co-accused are entitled to be released on bail and objection raised by the informant cannot be a ground for rejection of their applications. Whereas in the case of the applicant, application is rejected solely on the ground that the informant has objected release of the applicant on bail.

6. Apart from order passed by the learned Additional Sessions Judge granting bail to co-accused, in my view, there is no reason to deny the bail to the applicant. If we consider the facts disclosed in F.I.R., then the incident cannot said to be premeditated. The incident appears to have occurred all of sudden on account of teasing and abusing the female family members of the informant while they were proceeding to their house. The applicant is claimed to be aged more than 58 years. He was working with National Textile Mills as workman and after retirement running eating house known as “Maratha Khanaval”. In the background of the age and status of the applicant, it is difficult to believe that the applicant was involved in teasing and abusing

female family members of the informant. It is mentioned in the complaint that there was previous enmity between the informant and the applicant. The applicant attributed to assault by means of sword on the leg of the informant. The report of medical examination reveals that the informant has sustained stab wound over right upper abdomen and one CLW on right lower limb and required to take treatment at Shwaas Critical Care Hospital, Dhule during the period 12th June, 2017 to 19th June, 2017. The applicant was arrested on 24th June, 2017. During interrogation, nothing was recovered at the instance of the applicant, though it is claimed that he has assaulted by means of sword. Charge-sheet is already filed in the case. Co-accused are released on bail. Therefore, considering the overall facts and circumstances of the case, nature of accusation, injury sustained by the informant, status of investigation, I am of the view that the applicant deserves to be released on bail.

7. The application is opposed with contention that the applicant is having track record of involvement in number of criminal cases. In the affidavit filed by investigating officer, it is mentioned that as many as four cases are pending against the applicant. By filing affidavit to counter the allegation it is pointed out that in one case the applicant was acquitted and in another case discharge report has been filed against him. C.R. No. 4 of 2013 registered against the applicant pertains to registration of offences u/s 143,

147, 148, 149, 353, 332, 333, 337, 338, 307, 452, 435 and 436 of I.P.C. arising out of riot which was taken place in the year 2013 in between two communities and more than 100 persons were charge-sheeted in that case. The applicant is shown to be one of the accused involved in said case. So far as C.R. No. 5 of 2013 is concerned, same is still under investigation. In this background, the alleged criminal incident of the applicant is not sufficient to deny bail to the applicant. In view of apprehension expressed by prosecution that in the event of release of the applicant on bail, there is every likelihood that he may cause threat to prosecution witnesses and pressurise them not to depose against him, then appropriate condition can be imposed to prevent the applicant from entering the local limits of Dhule city and not to tamper the prosecution witnesses. Hence following order :-

ORDER

- (i) Application is allowed.
- (ii) The applicant lying arrested in connection with offence u/s 307, 143, 147, 148, 149, 294, 427 of I.P.C. and section 4 r/w 25 of Indian Arms Act registered vide C.R. No. 77 of 2017 with Azad Nagar Police Station, Dist. Dhule be released on bail on furnishing bail in the sum of Rs.50,000/- with one surety in the like amount on following conditions :-

(a) The applicant shall not enter into the local limits of Dhule city till conclusion of trial without prior permission from Sessions Court except for the purpose of attending the Court proceeding in connection with this case as well as other cases registered against him and to record his appearance before the officer in-charge of concerned police station.

(b) The applicant shall intimate to officer in-charge of Azad Nagar Police Station, Dhule, the name of place and address where the applicant going to residing in lieu of condition of bail.

(c) The applicant shall furnish names and addresses of his three close relatives with their contact numbers.

(d) The applicant shall not indulge into offence of similar in nature during the pendency of trial.

(e) The applicant shall not indulge into act amount to tampering the prosecution witnesses.

- (f) Pending disposal of case, the applicant shall appear before the officer in-charge of Azad Nagar Police Station, Dhule on last day of each month from 10 a.m. to 11 a.m. to record his appearance.
- (iii) In the event of breach of any of the bail condition, bail granted to the applicant is liable to be cancelled.
- (iv) Bail be furnished before the Sessions Court.
- (v) The learned Sessions Court is directed to expedite the hearing of the case and make an endeavour to conclude the trial as early as possible and preferably within a period of one year. In case trial is not concluded within one year, the applicant will be at liberty to apply for relaxation of condition of bail not to enter into the local limits of Dhule city.
- (vi) Application stands disposed of in above view.

(V. L. ACHLIYA, J.)

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