

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

DISTRICT : AURANGABAD

927 CRIMINAL APPLICATION NO. 6461 OF 2017

DNYANESHWAR S/O SHIVLL PAWAR & ANR.

VERSUS

THE STATE OF MAHARASHTRA

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Mr. N.S.Ghanekar, Advocate for Applicants.

Mr. K.N.Lokhande, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 7th DECEMBER, 2017

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ORAL ORDER :

1. The applicants lying arrested in connection with the offences u/s 307,324,435,427,323,504 r/w 34 of the Indian Penal Code vide Crime No. 35/2016 registered at Pachod police station, Tq. Paithan, District Aurangabad preferred this application to release them on bail.

2. Heard the learned counsel for the applicants and A.P.P. for the respondent - State. Perused the

papers of investigation.

3. In short, it is the contention of the learned counsel for the applicants that even if the allegations made in the F.I.R. presumed to be true and correct, still it make out no offence u/s 307 of I.P.C. It is contended that as per the report of medical examination, the applicants found to have sustained minor injuries. It is contended that investigation is practically over. The applicants are lying in jail since 29/09/2017. The applicants have no criminal antecedents. He submits that the incident of trifle in nature has been given colour of serious offence u/s 307 of I.P.C. It is pointed out that initially the offences u/s 324,323,427,435,504 r/w 34 of I.P.C. were registered. Later-on, the offence u/s 307 of I.P.C. came to be added. It is contended that looking to the F.I.R. and injury certificate, there is absolutely no justification to add offence u/s 307 of I.P.C. In this back-ground, learned counsel for the applicants submits that the applicants be enlarged on bail.

4. On the other hand, learned A.P.P. opposed the application with the contention that the statement of

injured was recorded on 02/02/2017 after he was discharged from the hospital. The injured has stated that the accused persons tried to forcibly take him to throw in the well. He escaped from the custody of the accused and thereby saved his life. On the basis of statement of injured, offence u/s 307 of I.P.C. is added.

5. On due consideration of the submissions advanced in the light of overall facts of the prosecution case, I am of the view that the case is made out to enlarge the applicants on bail. Perusal of the F.I.R. reveals that the it was lodged by the informant on the basis of the facts relating to the incident disclosed to him by the informant. In the complaint lodged first in instance, no such disclosure of attempt to kill the injured was disclosed by the injured. Two days after the incident, statement of the informant was recorded, wherein the informant has disclosed that the accused tried to take him forcibly towards well and throw him in it. In the facts and circumstances of the case, the possibility can not be ruled out that the informant has made exaggeration to rope in the applicants in commission of serious offence. As per the medical report of examination, the informant was having simple injuries. It appears that the informant was

admitted in hospital for the purpose of treatment. The investigation of the case is practically completed. There is no track record of the applicants indulging into criminal activities. In this view, I am inclined to allow the application and pass the following order.

ORDER

1. The application is allowed.
2. Applicant No. 1 Dnyaneshwar s/o Shivilal Pawar and applicant No. 2 Shantilal s/o Shivilal Pawar lying arrested in Crime No. 35/2016 registered at Pachod police station, Tq. Paithan, District Aurangabad for the offences punishable u/s 307,324,435,427,323,504 r/w 34 of the Indian Penal Code be released on bail on furnishing bail in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand] each with one surety in like amount on following conditions.

[i] The applicants shall not indulge in to act of tampering of prosecution witnesses.

[ii] Till filing of charge sheet, the applicants shall

appear and record their appearance before the Investigating Officer on every Sunday in between 10.00 to 11.00 a.m. and after filing of charge sheet appear and record their appearance before the Officer-in-charge of Pachod police station, Tq. Paithan, District Aurangabad on last day of each month in between 10.00 a.m. to 11.00 a.m. till conclusion of trial.

[iii] The applicants shall furnish the names and address of their three close relatives with their phone numbers.

[iv] The applicants shall not indulged into commission of offences of similar in nature.

3. In the event of breach of any of the conditions, bail granted to the applicants is liable to be cancelled.

4. Bail to be furnished before the trial Court.

5. The application is disposed of in above terms.

[V.L.ACHLIYA, J.]