

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.962 OF 2020

Manoj s/o Manik Bhadange,
Age 22 years, Occupation Trustee
of Akhil, Bhartiya Kushta Seva
Sangh Shirur R/o Shirur Tq. Shirur
Dist. Pune.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Belwandi Police Station,
Tq. Shrigonda Dist. Ahmednagar.

...Respondent

.....
Advocate for Applicant : Mr. G. G. Kadam
APP for Respondent-State : Mr. S. Y. Mahajan
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
11-12-2020.**

**DATE OF PRONOUNCING THE ORDER:
16-12-2020.**

ORDER :

1. Present application has been filed under Section 438 of Code of Criminal Procedure by accused No.6 who is apprehending his arrest in connection with Crime No.227 of 2020 by Belwandi Police Station Tq. Shrigonda Dist. Ahmednagar, for the offences punishable under

Section 307, 324, 323, 143, 147, 148, 149, 504, 506, 188, 269, 270 of Indian Penal Code and Section 2, 3, 4 of Epidemic Diseases Act.

2. Heard learned Advocate Mr. G. G. Kadam for applicant and learned Additional Public Prosecutor Mr. S. Y. Mahajan for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the report would show that informant Omkar Waghmare had given a call on 03-07-2020 to accused No.1 but he did not take it, therefore the informant contacted accused No.1 from the mobile of his friend and asked the accused No.1 to return the due amount of Rs.1500/-. Accused No.1 told that he would give the amount but then asked as to why he has contacted him on mobile. He had started abusing on the phone itself, but then asked the informant and his friend to be at Shirur, however the informant and his friend went to Deodaithan. Phone was received by the informant from accused No.1 stating that he would meet him at Deodaithan, and therefore, informant, one Sumit Waghmare and Santosh Waghmare went at about 09.00 p.m. They found accused No.4, 2 and 3 coming on motorcycle having iron rods in their hand. When they were discussing, at that time the accused No.1 along with

accused No.5 and 6 went there on motorcycle and they were holding iron rod and glass bottles. Accused No.1 picked up quarrel. Accused No.5 had then given blow of the iron rod on the right hand, right leg and head of the informant. Accused No.1 had caused serious injury to Sumit Waghmare and accused No.4, 2, 3 and 6 had tried to commit murder by assaulting Sumit Waghmare by iron rod. Accused No.5 had then assaulted Santosh Waghmare. Informant and his friends had received severe injuries. Accused went away from the spot by giving threats to them. Thereafter, the informant and others were admitted to hospital. This story would show that the weapon that is allegedly used by the accused No.1 and 2, is of wooden log. In fact, accused No.3 Mohan Dhotre has been released on regular bail by the learned Additional Sessions Judge. FIR does not name present applicant. No specific role is attributed to him. As regards evidence is concerned, statements of witnesses have been recorded, charge-sheet is already filed. The city scan report shows only the slight depressed fracture of left parietal and temporal calvarium. Witness Sumit Waghmare is now discharged from hospital. The applicant was in Latur district on the alleged date and time of incident. The Medical Officer of Primary Health Centre, Chincholi (B) Tq. And Dist. Latur has issued medical certificate after

physical examination of the applicant on 03-07-2020. He was declared fit to travel. Further, the Tahsildar, Shirur Dist.Pune in whose jurisdiction the applicant is residing and works for leprosy patients had issued pass in the name of the present applicant and his parents for the supply of essential commodities. The applicant is doing a good work in pandemic situation. In fact, the other accused persons are from different place and the present applicant is from the different place, and therefore, it is absolutely not possible for the applicant to know the other accused persons. He has not participated in any crime. The charge-sheet also does not show any overt act on his part. His name has been falsely taken by witness Dadabhau Wakhare and Sourabh Korke. There are no criminal antecedents of the applicant. Under such circumstance, when the trial would stand after much long period, now the physical custody of the applicant is not required at all.

4. Per contra, the learned Additional Public Prosecutor submitted that though witness Sunil Waghmare is discharged, yet, he is still under treatment with Columbia Asia Hospital, Pune. He is unable to walk or even talk. He is required to go for treatment after every eight to fifteen days. He is seriously injured in the incident, and as

per the information more than Rs.16 Lakh have been spent on his treatment. Due to his such condition even his statement has not been recorded by police though charge-sheet has been filed. It has been further submitted on behalf of the prosecution that though one of the co-accused has been released on bail, it cannot give a right to the present applicant on the ground of parity because apart from the role attributed to him, his criminal background is also required to be considered. The charge-sheet would show specific role though the name of present applicant was not stated in the FIR, yet witness Sourabh Korke and Dadabhau Wakhare have specifically taken the name of present applicant. He has been referred as 'Anna Bhadange'. The statement of these two witnesses have been taken on 04-07-2020 i. e. on the same day when the FIR was lodged. They are the eye-witnesses and there is reason to disbelieve them even at this initial stage. In the FIR one unknown person has been mentioned who has taken part in the crime. The informant either might not have been able to recognize the applicant or as it was night time, he could have only felt the presence of the applicant, but when the witness who had seen the present applicant assaulting the informant as well as other persons i.e. Sumit Waghmare, Omkar Waghmare and Santosh Waghmare with iron rod, wooden log and

glass bottle, then definitely the custody of weapons that was allegedly used by the present applicant will have to be done. The said aspect of recovery and investigation against the present applicant can still be completed under Section 173 (8) of Code of Criminal Procedure. Learned APP therefore prayed for rejection of the application.

5. The story that is told in First Information Report has already been covered, and therefore, it is not repeated. As regards the present applicant is concerned, it is alleged that he had assaulted Sumit Waghmare by wooden log. Though Mohan Dhotre who is similarly situated has been released on bail, yet the other evidence on record is required to be considered. Two wooden logs, one iron rod, two glass of bottles have been recovered from the spot. There are eye-witnesses to the incident viz. Sumit Kauthale and Santosh Waghmare. Even Santosh Waghmare is stated to have received injuries in the incident. As regards the medical evidence is concerned, the medical report of Sumit Waghmare, to whom we are presently concerned, as role that is attributed to the present applicant is that he had assaulted said person. The report that is placed on record by Matoshree Madanbai Dhariwal Hospital,

Ghodnadi (Shirur) Dist. Pune. It is stated therein that : -

“Slight depressed fracture of left parietal and temporal calvarium is seen. Acute SDH is seen over left frontal, parietal and temporal calvarium of maximum thickness 22 mm is seen.

Diffuse cerebral edema is seen in the form of moderate compression of left lateral ventricle and midline shift of 15 mm towards right side.

Descending transtentorial herniation of nuchal cord noted causing compression over brainstem.

Multiple facial fractures.”

That certificate was issued on 03-07-2020. The present report by police is that, though said witness has been discharged, yet he is unable to walk or talk. He is still under treatment. There is no reason to disbelieve the said condition at this stage.

6. It is to be noted that the applicant is halfheartedly putting plea of alibi at this stage which in fact cannot be taken into consideration. Though he is relying on the medical certificate that is issued by the Medical officer from Chincholi Tq. Dist. Latur, it can be seen that it was issued on 03-07-2020 and the incident has taken place around 09.00 p.m. on the same day i.e. 03-07-2020 at Deodaithan Tq. Shrigonda Dist. Ahmednagar. Plea of alibi will have to be proved by the accused at the time of trial. But a note can be taken that on the

said certificate time is not mentioned as to when the applicant was examined and it is not impossible for a person to travel from Chincholi and reach to Deodaithan by 09.00 p.m. So only on that count, the applicant cannot be released on anticipatory bail.

7. Another ground that has been taken is that the name of the present applicant is not appearing in the FIR. The FIR says apart from the named accused persons, there was one unknown person. Further the statement of eye-witnesses as referred above viz. Sourabh Korke and Dadabhau Wakhare specifically say that one Anna Bhadange was also amongst the other accused persons and he has assaulted the informant and others with iron rod, wooden log and glass bottles. When it was noticed by this Court that name mentioned by these two witnesses is Anna Bhadange and present application has been filed under name Manoj Manik Bhadange, then whether the applicant is accepting that the reference that has been made by these two witnesses is the same. On instructions, the learned Advocate for the applicant submitted that the nickname of the present applicant is Anna. Now the applicant is coming with a case that he is totally new to the said village and could not have been amongst the accused persons who are from different village.

The applicant in his application has not given any reason from his angle as to why he could have been implicated by these two witnesses, that too in his nickname, therefore there appears to be evidence against the present applicant. The weapon allegedly used by the present applicant in commission of the crime is definitely required to be seized. It will not be out of place to mention here that though one of the co-accused has been released on regular bail, yet the regular bail of other three co-accused has been rejected by this Court vide ABA No.1328 of 2020 and 1327 of 2020 on 04-12-2020. No doubt, the rejection of those applications by this Court is on different ground i.e. the criminal antecedents of those applicants. Taking into consideration the gravity of the offence, the manner in which it was committed, the reason for which it is committed, the criminal background of the applicant, and also the fact that there is direct evidence against him in the form of eye-witnesses, he did not deserves to be released on bail. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-