

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1294 OF 2020

1. Bajrang s/o Indalsing Barwal
 2. Dinesh s/o Devsingh Balwane
 3. Ganesh s/o Devsingh Balawane
- ... Applicants

Versus

1. The State of Maharashtra
- ... Respondent

.....

Mr. B. P. Pande, Advocate for applicants.
Mr. S. P. Deshmukh, APP for respondent – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 25-11-2020

PRONOUNCED ON : 04-12-2020

ORDER :

1. Present application has been filed by original accused Nos.1, 2 and 4 for getting bail under Section 439 of the Code of Criminal Procedure. They have been arrested in connection with Crime No.113 of 2020 registered with Fardapur Police Station, Tq. Soygaon Dist. Aurangabad for the offences punishable under Sections 307, 325, 452, 143, 147, 148, 149, 323, 324, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Mr. B. P. Pande for applicants and learned APP Mr. S. P. Deshmukh for respondent – State.

3. It has been vehemently submitted on behalf of the applicants that perusal of the FIR would show that the allegations made against the present applicants are that they have assaulted the informant by stick. The applicants were sent to police custody and thereafter, they are in magisterial custody. Nothing has been seized at the instance of the present applicants. Main allegations as regards offence under Section 307 of Indian Penal Code are concerned, they are against accused No.3 who is not before the Court in this application. It is stated that accused No.3 had tried to strangle the wife of the informant by means of wire. As regards present applicants are concerned, at the most, offence under Sections 325 or 324 of Indian Penal Code are attracted since it is stated that informant has sustained fracture to his hand. Therefore, further physical custody of the applicants is not required and, therefore, they deserve to be released on bail.

4. Per contra, learned APP has opposed the application and submitted that the offence is serious. The parties are from the same vicinity and, therefore, possibility of tampering the evidence cannot be ruled out. Certain accused persons are still absconding and the present applicants are not giving any clue in respect of the whereabouts of those accused persons.

5. At the outset, it is required to be noted that while considering the application under Section 439 of the Code of Criminal Procedure apart from the

other factors as laid down by Hon'ble Supreme Court and this Court in catena of judgments, what is required to be seen is the role attributed to each accused. As regards the present applicants are concerned, in the FIR as well as in the statements of the witnesses, role attributed to them is assault by stick to the informant. Informant has sustained grievous hurt in the nature of fracture to his hand. Therefore, definitely Section 307 of Indian Penal Code is not attracted to the present applicants. Though the applicants have undergone requisite police custody, it appears that the police were not able to recover the alleged weapon used by these applicants. Now, only on that count, their liberty need not be curtailed. Even if we see the say of the Investigating Officer to the learned APP, then the grounds opposing the application appeared to be routine. Therefore, physical custody of the applicants is not required for the purpose of further investigation and they can be released on bail by imposing conditions. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) Applicants viz. 1) Bajrang s/o Indalsing Barwal, 2) Dinesh s/o Devsingh Balwane and 3) Ganesh s/o Devsingh Balawane, be released on P. R. Bond of Rs.30,000/- (Rupees Thirty Thousand only) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

- III) Applicants shall not tamper with the evidence of the prosecution in any manner.
- IV) Applicants shall remain present before the Investigating Officer on every Monday and Friday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.
- V) Bail before Sessions Court.

[SMT. VIBHA KANKANWADI, J.]

scm