

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 BAIL APPLICATION NO.1304 OF 2020

KIRAN S/O. NAGNATH WARAT
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO.2096 OF 2020
IN BA/1304/2020

AMOL ASHOK WARAT
VERSUS
KIRAN S/O. NAGNATH WARAT AND ANOTHER

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Advocate for Applicant : Mr. Gaware Niteen V.
APP for Respondent-State : Mr. S. B. Narwade.
Advocate for Informant to assist APP : Mr. R. R. Karpe.

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CORAM : V. K. JADHAV, J.
DATE : 17.12.2020

PER COURT :-

1. Heard learned counsel Mr. R. R. Karpe for the applicant in Criminal Application No.2096 of 2020. For the reasons stated in the application, Criminal Application is allowed in terms of prayer clause "B". Criminal application accordingly disposed off.
2. The applicant is seeking regular bail in connection with Crime No.216 of 2020 registered with Jamkhed Police Station,

District Ahmednagar for the offences punishable under Sections 302, 323, 143, 147, 148, 149, 504, 506, 109, 114, 188 of the IPC and Section 37(1)(3) read with Section 135 of the Bombay Police Act. His application with similar prayer bearing Criminal (Bail) Misc. Application No.511 of 2020 came to be rejected by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar.

3. The learned counsel for the applicant submits that, the investigation is over and the charge-sheet has been submitted. The applicant is in jail in connection with the present crime since 23.05.2020. The learned counsel submits that it appears from the allegations made in the complaint that agricultural fields of the informant and the applicant are almost adjacent to each other and initially at about 10.00 a.m., on the day of incident, the quarrel had taken place on account of excavation of the mud from the agricultural lands by witness Ushabai. It further appears that the father of the informant has given understanding that they would get their respective agricultural lands measured, however, as per the allegations, the applicant and the other co-accused persons quarreled with the informant and his father and tried to beat them. It is further alleged that

thereafter the informant along with his father went towards his house and the applicant and the other co-accused persons followed them. They were armed with weapons. The learned counsel submits that as per the allegations, on reaching there, the present applicant has instigated the other co-accused persons to beat the informant, his father and the other persons of his family. The learned counsel submits that however, as alleged in the complaint, deceased Omkar who slept on the cot, extended the beating by co-accused Ajay and Vijay. The learned counsel submits that in respect of the incident occurred on the same date, time and place, on the basis of the complaint lodged by co-accused Ajay, Crime No.217 of 2020 came to be registered against the informant and three others for having committed an offence punishable under Section 307 etc. of the IPC. The learned counsel submits that had there been formation of an unlawful assembly with common unlawful object to extend the beating to the informant and his family members, it is very unlikely that deceased Omkar alone had sustained the injuries in the said assault. The learned counsel submits that the informant is suppressing the material facts. Even there is no reference to the incident for which co-accused

Ajay has lodged the complaint. The learned counsel submits that co-accused Ajay has sustained the injuries in the said assault. The learned counsel submits that there is no criminal history. The applicant is an agriculturist, having a fixed place of residence. The applicant may be released on bail.

4. The learned APP assisted by Advocate Mr. R. R. Karpe has strongly resisted the application on the ground that *prima facie*, there is an evidence about formation of an unlawful assembly. After the initial incident, at about 10.00 a.m., in the field, the applicant along with his son and other co-accused persons went towards the house of the informant and accordingly deceased Omkar was subjected to beating. The applicant has instigated his two sons to extend the beating to deceased Omkar. Deceased Omkar died due to head injury and it has been specifically alleged that co-accused Ajay and Vijay extended the beating to deceased Omkar with the help of wooden log. *Prima facie*, there is an evidence about the homicidal death and deceased Omkar died due to head injury. There is a strong case against the applicant. There is possibility of tampering with the prosecution evidence. The applicant may not be released on bail.

5. On going through the allegations made in the complaint and on perusal of the charge-sheet, though I find the name of the applicant is mentioned in the FIR with a specific role about instigating the other co-accused persons, however, in respect of the incident occurred on the same date, time and place, co-accused Ajay has also lodged the complaint in the same Police Station and on the basis of his complaint, Crime No.217 of 2020 is registered against the informant and three others for having committed an offence punishable under Section 307 etc. of the IPC. It appears that there was almost a free fight between two groups at the relevant time and in consequence thereof, both the groups have lodged the complaints against each other. In view of the same, the individual acts are required to be considered. So far as the applicant is concerned, the allegations have been made to the extent that he has instigated the co-accused persons to make an assault on the informant and his family members. On careful perusal of the allegations made in the complaint and the statements of the witnesses, it appears that deceased Omkar alone has sustained the injuries in the second incident and neither the informant nor any other person of his family sustained any injuries nor

there are allegations that the applicant and the other co-accused persons assaulted the informant and the other family members in the said incident. It is also alleged in the complaint that at the time of the said incident, deceased Omkar slept outside of the *Vasti* on one cot and he was assaulted and beaten. In view of the same, the possibility cannot be ruled out that co-accused Ajay and Vijay had extended the beating to deceased Omkar. Further the possibility also cannot be ruled out that the applicant might have been implicated in the second incident. There is no criminal history. The applicant is an agriculturist by occupation. The applicant is having a fixed place of residence and he is available for trial. The learned APP submits that to avoid tampering of the prosecution evidence, stringent conditions may be imposed, while releasing the applicant on bail. Thus, considering the allegations made in the complaint and the fact that the agricultural field of both the parties are almost adjacent to each other, it would be just and appropriate, if the entry of the applicant is restricted in the village till the conclusion of the trial. Hence, I proceed to pass the following order :

ORDER

1. The application is hereby allowed.
2. The applicant KIRAN S/O. NAGNATH WARAT in connection with Crime No.216 of 2020 registered with Jamkhed Police Station, District Ahmednagar for the offences punishable under Sections 302, 323, 143, 147, 148, 149, 504, 506, 109, 114, 188 of the IPC and Section 37(1)(3) read with Section 135 of the Bombay Police Act, be released on bail on furnishing PB. of Rs.20,000/-(Rupees Twenty Thousand only) with one solvent surety of the like amount on the following conditions :-
 - a] The applicant shall not tamper with the prosecution evidence in any manner.
 - b] The applicant shall not enter within the limits of village Sakat, Tq. Jamkhed, District Ahmednagar till the conclusion of the trial.
3. Application is accordingly disposed off.
4. The observations made herein above are *prima facie* in nature and it is for the Trial Court to appreciate the evidence on its own merits during the full fledged trial of the case.

(V. K. JADHAV, J.)

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