

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1328 OF 2020

- 1) Ganesh s/o Lalasaheb Ohol,
Age 24 years, Occupation Agri.,
R/o Pimpri Kolandar Tq.Shrigonda
Dist. Ahmednagar.
- 2) Ishwar @ Dada Khandu Ohol,
Age 24 years, Occupation Labour,
R/o Pimpri Kolandar Tq.Shrigonda
Dist. Ahmednagar.

**...Applicants
(Orig.Accused)**

VERSUS

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

...Respondent

.....

**WITH
BAIL APPLICATION NO.1327 OF 2020**

Sagar @ Prashant s/o Vishwanath Bankar,
Age 26 years, Occupation Labour,
R/o Devdaithan Tq. Shrigonda
Dist. Ahmednagar.

**...Applicant
(Orig.Accused)**

VERSUS

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

...Respondent

.....

Advocate for Applicants : Mr. R. R. Karpe.
APP for Respondent-State : Mr. Mr. N. T. Bhagat.

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
25-11-2020.**

**Date of Pronouncing The Order :
04-12-2020.**

ORDER :

1. Both the applications have been filed under Section 439 of Code of Criminal Procedure by accused No.1, 2 and 4 who have been arrested 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. R. R. Karpe for applicants and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the 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 present applicants who are

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, and therefore, the present applicants were claiming their release on the ground of parity also, however it was not allowed. 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. One of the ground for rejection was that the witness i.e. Sumit Waghmare is still under treatment, however as per the instructions of the applicants, he has been discharged. Under such circumstance, when the trial would stand after much long period, now the physical custody of the applicants is not required at all. The learned Additional Sessions Judge ought to have released the present applicants also on bail on the ground of parity when allegations against accused No.3 Mohan Dhotre is same.

4. Per contra, the learned Additional Public Prosecutor submitted that on 20-11-2020 a statement was made on behalf of the State that said witness is still taking treatment and he is in a serious condition. Report has been given by police on 25-11-2020 that he has been discharged, however 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 applicants on the ground of parity because apart from the role attributed to them, their criminal background is also required to be considered. Serious offences are pending against the accused persons and it appears that they are the hardened criminals. This was also one of the ground for rejection of their application by the learned Additional Sessions Judge. When for the dispute of Rs.1500/- if they can commit such a serious offence, then possibility of similar offence or more serious offence at their hands cannot be ruled out.

5. The story that is told in First Information Report has already been covered, and therefore, it is not repeated. As regards the present applicants are concerned, it is alleged that they 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 applicants is that they 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. Now as regards the parity is concerned, though the role is required to be considered, yet it does not restrict to that extent only. The criminal antecedents of each of the accused is also then required to be seen. As regards accused No.1 is concerned, he is involved in Crime No.47 of 2015 under Section 394 of IPC, Crime No.76 of 2020 under Section 307 of IPC. Both these offences are registered with Belwandi Police Station. Further, he is also involved in Crime No.338 of 2014 under Section 399 read with 34 of IPC registered with Shirur Police Station. As regards accused No.2 is concerned, he is involved in Crime No.76 of 2020 under Section 307, 324 of IPC, registered with Belwandi Police Station. These offences definitely different from the present crime i.e. 227 of 2020, registered with the same police station. That means, in this year itself the said offence vide Crime No.76 of 2020 for the offence punishable under Section 307 read with 34 of IPC has been registered against these two applicants. There is every room to believe that they have been released on bail, and therefore, they were out side the jail when the offence in this case took place. That means, while they were on bail in that offence which is registered under Section 307 of IPC, it is alleged that they have committed this offence which is also under Section 307 of IPC. This fact is then

definitely required to be considered. Both the applicants have not produced anything on record which would say that those offences are not pending against them as on today. Therefore, the ground of parity is definitely not available to the present 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 applicants, and also the fact that there is direct evidence against them in the form of eye-witnesses, they did not deserve to be released on bail. Hence, both the applications stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-