

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

921 BAIL APPLICATION NO.10 OF 2021

MANOJ @ MAHESH SHAMRAO KHARAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.R. Andhale, Advocate for applicant

Mrs. D.S. Jape, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th FEBRUARY, 2021.

PER COURT :

1 Present applicant has been arrested, in connection with Crime No.1031/2020 dated 06.11.2020 registered with Shevgaon Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 341, 326, 324, 323, 427, 504, 506 read with Section 34 of the Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. S.R. Andhale for the applicant and learned APP Mrs. D.S. Jape for the respondent.

3 It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that it is nothing but a concocted story, just to give counter blow to the FIR that was lodged by the father of the present applicant vide Crime No.1030/2020 on the same day i.e. on 06.11.2020 with the same Police Station and the said FIR is prior in time. The informant has contended that the applicant and his family members had attacked his family members and informant himself. However, now, the applicant, who came to be arrested on 05.12.2020 is in Magisterial Custody and the alleged weapon used in the commission of the offence has been seized, therefore, further physical custody is not required. He, therefore, canvassed for granting of bail. He also pointed out that the father of the applicant has been released on regular bail by the learned Additional Sessions Judge, Ahmednagar, and therefore, on the ground of parity also he is entitled to be released on bail.

4 Learned APP strongly opposed the application and submitted that role is attributed to each and every accused in the FIR. As regards the present applicant is concerned, it is stated that he has assaulted the informant, who is aged 80, on the left side of his head above ear with the help of sickle. The sickle has been recovered under Section 27 of the Indian Evidence Act from the applicant. The injury certificate of the informant

would show that he had sustained two injuries; one is inside injury behind left ear and earlobe and the another is blunt trauma to chest. Both were simple, however, he was referred for C.T. scan. The injury certificate issued by Asian Noble Hospital Pvt. Ltd. would show that the C.T. scan of brain suggestive of scalp edema in left parietal region. Therefore, a serious injury that to a vital part was caused to the informant, who is 80 years old. Further, it appears that the present applicant resides in front of the house of the informant, and therefore, tampering with the evidence cannot be ruled out. She, therefore, strongly opposed the application.

5 At the outset, it is to be noted that the present applicant has been arrested as an accused in Crime No.1031/2020, which came to be lodged on 06.11.2020 at about 22.52 hours. Perusal of the copy of the FIR lodged by the father of the present applicant bearing Crime No.1030/2020 with the same Police Station would show that it was lodged prior in time i.e. at 21.46 hours, under Section 326, 324, 323, 504, 506 of the Indian Penal Code. Present informant has been arrayed as accused No.2 and the allegation against the present informant, aged 80, is that he had assaulted present applicant with fists and kicks. Further, it can be seen that in the said FIR also it is stated that incident had taken place at about 3.00 p.m. on 05.11.2020 in front of the house of the informant and in this case also the place of the

offence, time and date appeared to be the same. Therefore, prima facie it appears that these are the cross cases. The place of the offence can also be marked from the spot panchnama, which is made available in the police papers. Now, the next question is about the injury sustained by the informant. As regards the role attributed to the present applicant is concerned, in the FIR it is stated that he had assaulted the informant by sickle on the left parietal region just above the left ear. The injury certificate shows the first injury as incised injury behind left ear and earlobe. The weapon of injury is stated to be sharp object. But then it is stated to be that injury is simple. Further, it appears that the informant was referred by Rural Hospital, Shevgaon for C.T. scan and then it appears that he had gone to Asian Noble Hospital Private Limited, where the C.T. scan was done. The certificate issued by the said hospital authority states that the C.T. scan of the brain is suggestive of scalp edema in left parietal region, but still the nature of the injury is stated to be simple. Under such circumstance, whether the case would fall within Section 307 of the Indian Penal Code or not would be dealt with by the Trial Court, at the end of the trial after the medical evidence is adduced.

6 The police papers would further show that there is discovery of sickle at the instance of present applicant under Section 27 of the Indian

Evidence Act and the said memorandum and discovery is on 07.12.2020. The description of the alleged weapon does not say that it had blood stains, rather it says that it is rusted. Thus, it can be seen that the discovery is on the day of arrest, but the arrest itself is belated i.e. one month after the incident. The Investigating Officer, who has given the written objections, does not say that the present applicant was absconding. The question then arises, as to why the discovery is belated, though at one place he tried to say that the present applicant as well as his father were absconding but it appears that the Investigating Officer lost sight of the fact that the father of the informant is the informant in the cross case. His bail application has been allowed by the learned Additional Sessions Judge and it appears that his application was not objected on the ground that he was absconding. Therefore, taking into consideration all these aspects the applicant deserves to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Manoj @ Mahesh Shamrao Kharad, who has been arrested, in connection with Crime No.1031/2020 dated 06.11.2020 registered with Shevgaon Police Station, Dist. Ahmednagar, for the offence

punishable under Section 307, 341, 326, 324, 323, 427, 504, 506 read with Section 34 of the Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act, be released on P.R. of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner nor he shall indulge in any criminal activity.

4 He shall attend the Shevgaon Police Station on every Monday and Tuesday in between 11.00 a.m. to 02.00 p.m., till filing of the charge sheet.

5 If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)