

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

CRIMINAL APPEAL NO. 28 OF 2021

Deepak s/o. Namdev Savant,
Age : 37 years, Occu: Business,
R/o. Pipeline Road, Nirmalnagar,
Alankapuri Society, Opp. Ganga Lawns,
Savedi, Tq. & Dist. Ahmednagar.

...Appellant

Versus

The State of Maharashtra and Anr.

...Respondents

.....
Shri. N. V. Gaware, Advocate for the appellant
Shri. S. D. Ghayal, APP for respondent No.1/State
Shri. A. L. Kanade, Advocate for respondent No. 2
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**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 16th FEBRUARY, 2021

ORAL ORDER [Per Ravindra V. Ghuge, J.] : -

1. By this appeal, the appellant/accused no. 1 seeks regular bail in connection with FIR No. 7702/2020 registered at 05:50 pm on 16.12.2020. By the impugned order dated 11.01.2021, barring the appellant - Gajanan (who has withdrawn his appeal bearing No. 30/2021, seeking anticipatory bail), rest of the accused have been granted regular bail by the trial Court.

2. We have heard the learned Advocates on behalf of the appellant/accused and respondent No. 2 (first informant) and the learned Prosecutor on behalf of the State. We have gone through the appeal paper-book as well as the charge-sheet with the accompanying documents, with the assistance of the learned Counsel. It requires no debate, that the charge-sheet has been filed before the trial Court on 11.02.2021. The other accused have been granted bail prior to the filing of the charge-sheet. Insofar as accused Gajanan is concerned, he has withdrawn his Criminal Appeal No. 30/2021 from this Court today, vide which, he had sought anticipatory bail.

3. Having considered the strenuous submissions of the Counsel and having perused the affidavit filed by respondent No. 2 (first informant) opposing the appeal, we find, that on 15.12.2020, there has been a free fight between two groups. Respondent No. 2 herein is the informant in the FIR No. 7702/2020 that was registered at 05:50 pm on 16.12.2020, which is about twenty (20) hours after the incident is alleged to have occurred on 15.12.2020. The present appellant - Deepak has also filed an FIR No. 7703/2020 at 06:22 pm on the same date viz. 16.12.2020.

4. In the first FIR, the informant has alleged a physical attack by three identified accused and four to five unidentified persons, who have been subsequently identified through investigation. By the second FIR, the present appellant has alleged an assault by Sawalaram Thokal and seven to eight unidentified persons. The grievance of the present appellant with reference to his FIR is that, the police authorities are soft-peddalling in the investigation and are ignoring the said FIR only to facilitate an advantage to the informant in the first FIR. The learned Prosecutor submits, on instructions, in this context that notices for interrogation have been issued by the Investigating Officer with regard to the second FIR filed by the present appellant - Deepak. There is no denial that none of the accused in the second FIR have been arrested, inasmuch as, barring Gajanan, all other persons named in the first FIR and pursuant to investigation, have been arrested. Barring Deepak and Gajanan, all have been granted regular bail prior to the submission of the charge-sheet, by the trial Court.

5. We have perused the FIR filed by respondent no. 2 against the present appellant-Deepak. We have perused the statements made by certain witnesses under Section 164 of the Code of Criminal Procedure. We have perused the charge-sheet and the

documents annexed thereto and we have also gone through the affidavit filed by the first informant - Manda w/o Arun Thokal.

6. The first informant - Manda has come with a specific attribute to the present appellant - Deepak that, he wielded a sharp weapon and he struck her husband – Arun, which blow was received by Arun on his wrist causing an incised injury. Manda does not state in the FIR that Deepak was holding a sword. So also, Arun does not state in his statement that, Deepak struck him with a sword. Manda has specifically stated in paragraph no. 5 of her affidavit filed today, that Deepak assaulted her husband with a knife, which resulted in a serious injury on the right hand wrist which got fractured. The learned Prosecutor submits that, a sword has been seized during investigation purportedly at the behest of Deepak. It is, therefore, a matter of adducing evidence as to whether a sword was indeed used in the attack or whether it was purely a knife, therefore, rendering the seizure of the sword farcical.

7. The learned Advocate for the informant and the learned Prosecutor submits that, Deepak has a series of crimes registered against him. Two of them were registered under Section 302 of the Indian Penal Code. It is, however, conceded that he has been

acquitted in one crime for the offence punishable under Section 302 IPC and in another crime, a report under Section 169 of the Cr.P.C. has been filed thereby disconnecting him with the said crime on account of which Section 302 of IPC was invoked.

8. The contents of the FIR and the charge-sheet indicate that the informant - Manda has put forth a case of about 8 to 9 persons having attacked them in front of their house. Wooden logs are said to have been used and five motorcycles belonging to the relatives of Manda have been burned down. The trial Court has granted regular bail to all the accused, except Deepak and Gajanan, who have been alleged to have used wooden logs to deliver multiple physical blows to various persons. We are not dealing with the role played by Gajanan since we do not intend to prejudice his case. Insofar as Deepak is concerned, he has been behind bars since 16.12.2020, interrogation and investigation is completed and the charge-sheet has been filed. In addition, other accused have been granted bail.

9. In view of the above, we do not find that Deepak deserves to be continuously detained behind bars. By imposing stringent conditions, it could be ensured that the witnesses would not be influenced and the evidence would not be tampered with.

10. As such, this appeal is allowed. Deepak Namdev Savant shall be released on regular bail on the following conditions : -

- [i] Deepak shall tender a P.R. bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with a solvent surety of the like amount and a cash surety of Rs.25,000/- (Rupees Twenty Five Thousand).
- [ii] Deepak shall not enter the district limits of Ahmednagar until the recording of oral evidence in the trial Court commences.
- [iii] While being released from jail, Deepak would tender his address of temporary residence until the commencement of the trial and he shall mark his attendance on every Tuesday and Friday in between 10:00 am to 02:00 pm until the commencement of the trial, in the Police Station having jurisdiction in the area where he intends to reside.
- [iv] The Station House Officer shall record the attendance of Deepak in the Station Diary by obtaining his signature.

- [v] Deepak shall also tender his cellular phone number as well as a self-attested copy of the Election Commission Voter ID Card/Aadhaar.
- [vi] Deepak shall not tamper with the evidence. He shall not try to contact the informant or the victims or any such person, who is likely to be a witness in the matter and would not influence the witnesses.
- [vii] Violation of any of the above conditions, shall be a good ground for cancellation of bail.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE