

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

915 BAIL APPLICATION NO.113 OF 2021

NOORA @ AJMUDDIN GULAB SAYYED

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.S. Jaju, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd MARCH, 2021.

PER COURT :

1 Present applicant has been arrested on 07.12.2020, in connection with Crime No.1013/2020 by M.I.D.C. Police Station, Ahmednagar, for the offence punishable under Section 395, 354, 452, 337, 427, 327, 324, 143, 147, 148, 149, 504, 506, 323 of the Indian Penal Code. He has filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. N.S. Jaju for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicant that

perusal of the information lodged by one Sumit Prabhakar Modhve would show that he is making allegations against the present applicant, which could attract offence under Section 354, 452, 323, 427 of the Indian Penal Code, but no other specific role has been attributed to him. In fact, the main accused is Amol Salve, who has been released on bail by the learned Sessions Judge. As regards the co-accused Amol is concerned, it is stated that he had taken away amount of Rs.19,500/- from the pocket of the informant. It is contended by the informant that in all seven accused persons had trespassed in his house and thereafter all the family members were assaulted. It is further alleged that said Amol had taken away the gold ornaments from the person of wife and mother of the informant. Other two co-accused have also been released on bail by learned Additional Sessions Judge. Further, nothing has been recovered at the instance of the present applicant. It would take longer time to the Investigating Officer to file charge sheet and then the trial would commence. Therefore, the applicant be released on bail.

4 Per contra, the learned APP strongly opposed the application. It is submitted that specific role is attributed to the present applicant and there is ample evidence against the present applicant. Applicant has criminal record. He is involved in Crime No.47/2015 for the offence punishable under Section 143, 148, 149, 436 of the Indian Penal Code and then there

are four offences under the Prevention of Gambling Act. Thereafter the informant has also reported that somebody had pelted stones on his house at about 2.30 p.m. on 21.12.2020 and shouting was given that he should take back the case, otherwise he will not be left alive. For that purpose also non cognizable offence has been registered. Therefore, taking into consideration the facts, under which the offence has been committed, criminal background and possibility of tampering with the evidence of the prosecution, the application deserves to be rejected.

5 The First Information Report has been lodged on the basis of the narration given by one Sumit Prabhakar Modhve. He has stated that he was walking on road along with his wife at about 10.30 p.m. on 06.12.2020. The applicant came there on motorcycle. After applicant was seen, the informant and his wife had left each others hand but then the present applicant is stated to have catch hold of the hand of the wife of the informant and the informant was manhandled. At that time, co-accused Kayyum came and even he had asked the informant that he should leave the place but his wife should remain there otherwise the applicant would assault him. When people started gathering the dispute was resolved and then informant and his wife went home. The informant further states that thereafter he had informed the said fact to his maternal uncle Satish on phone. Satish came home of the

informant and then again he had informed about the incident, but then the uncle told that he would resolve the dispute and went to house of the present applicant. Uncle came after some time and disclosed that the present applicant is not in a mood to listen but he is abusing, and therefore, they should lodge the report about the incident. Therefore, when the informant and uncle started to go to Police Station, they found people had gathered in front of their house. They were the present seven accused persons and some more 7-8 persons. They were holding sticks and iron rods. It is stated that they had started assaulting the informant and others. There was pelting of stones, as a result of which the informant and his brother Ajay received injuries. So also they were assaulted by the iron rod. Accused Amol Salve had pushed wife of the informant. Another person had assaulted mother of the informant on her head with iron rod and brick on her shoulder. Father of the informant as well as uncle had received injuries due to the ironrod. They had damaged the car of the informant as well as motorcycle. Amol took away cash of Rs.19,500/- from the pocket of the informant, 7-8 tolas of gold from the person of the wife and mother of the informant were snatched.

6 Thus, the perusal of the First Information Report would show that for the initial act, which is stated to have taken place outside the house on road, the offence under Section 354, 323 of the Indian Penal Code can be

said to be attracted to the present applicant. But as regards the subsequent act is concerned, the narration gives an impression that it was the concerted act as regards the entering into the house of the informant and assault to the informant and witnesses. No doubt, some specific act is attributed to Amol Salve in respect of he pushing wife of the informant, snatching amount from the pocket of informant and taking away the gold. At this stage itself, it can be also said that since Amol has been released by the learned Additional Sessions Judge, the present applicant is claiming parity.

7 Police papers are made available, and therefore, the statements those have been recorded of the witnesses can be considered, which appears to have not been considered by the learned Additional Sessions Judge while deciding the application filed by accused Amol. Statements of the witnesses viz. Jayshree, Ajay, Prabhakar, Vaishali, Satish, who are the family members and were present in the house of the informant would show that present applicant had come along with other accused persons and they are stating that all these persons had conjointly assaulted them with sticks and iron rod. But particular act is attributed to Amol, as aforesaid. The person, who was standing outside and watching the activity, appears to be witness Vikas, who is the friend of the informant. He has also stated the same thing but then he states that when he had tried to resist from outside, he was manhandled.

Supplementary statements of the witnesses have been recorded, especially, the family members and the informant would show that it was in respect of the article, that was seized from Amol under Section 27 of the Indian Evidence Act. No more explanation is come forward. Perusal of the Medico Legal Certificates would show that all the witnesses including the informant had sustained simple injuries. The question that may arise is, whether the alleged iron rod would have been used in the commission of crime or not. What has been recovered from the spot is, one wooden strip, one tube light, iron strip, one iron rod and one iron rusted pipe. Nothing has been recovered at the instance of the present applicant. Whatever, recovery has been done is at the instance of co-accused Amol. Though there appears to be some offences against the present applicant, the significant is only Crime No.47/2015, which is stated to be still pending for its adjudication. His involvement in the present crime and the role attributed to him is required to be considered and not only the earlier offence, that is, registered against him, in order to curtail his liberty. At the costs of repetition, it can be said that taking into consideration the role attributed to the present applicant in the FIR and the statements of the witnesses he would be similarly placed to two co-accused Kayyum and Sandip, and therefore, on the ground of parity also he is entitled to be released on bail. Further, it appears that one Sanket Popat Adhav, Yogesh Sharad Dhorajkar were released on anticipatory bail. Now, the

substantial part of the investigation is over, and therefore, the application deserves to be allowed. However, taking into consideration the fact that the applicant is resident of the same colony and in the neighbourhood of the informant, so also, in view of the non cognizable complaint, that is lodged on 21.12.2020, stringent conditions are required to be imposed. With these observations, following order is passed.

ORDER

- 1 Application stands allowed.
- 2 Applicant Noora @ Ajmuddin Gulab Sayyed, who has been arrested, in connection with Crime No.1013/2020 registered with M.I.D.C. Police Station, Ahmednagar, for the offence punishable under Section 395, 354, 452, 337, 427, 327, 324, 143, 147, 148, 149, 504, 506, 323 of the Indian Penal Code, be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) and two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only).
- 3 The applicant shall not tamper with the evidence of the prosecution, in any manner.
- 4 He shall not indulge in any criminal activity.
- 5 He shall attend the M.I.D.C. Police Station, Ahmednagar, thrice

in a week i.e. on every Monday, Wednesday and Friday between 08.00 a.m. to 11.00 a.m., till filing of charge sheet.

6 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.

7 He shall not enter the jurisdiction of village Navnagapur till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number to the Police Station and Trial Court. So also he should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

8 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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