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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.97 OF 2021
WITH
CRIMINAL APPLICATION NO.281/2021

Dashrath s/o Budha Mahajan = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.RS Deshmukh, Sr.Counsel, i/by Advocate DR
Deshmukh for Applicant;

Mr.NT Bhagat,APP for Respondent-State.

Mr.BS Deshmukh, Adv. To assist APP.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 06/04/2021

PRONOUNCED ON : 29/04/2021

PER COURT :-

1. Criminal Application No.281/2021 moved to assist APP is allowed and disposed of.

2. Present applicant came to be arrested on 7.9.2018 in connection with CR No.63/2018 dated 7.9.2018 by Erandol police station, District Jalgaon for the offences punishable under Sections 302, 307, 143, 148, 149 of IPC and under Sections 4/25 of Arms Act. It will not be out of place to mention here itself that the present applicant had filed Bail Application No.922/2019 before this

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Court and by order dated 6th August, 2019 that application came to be withdrawn on the instructions given by the present applicant with direction to the trial court to expedite the trial itself. Thereafter, liberty was given to the applicant to file an application for expeditious hearing of the case and liberty was granted to the application to file an application for bail before the Sessions Court in case trial does not get commenced within six months from the date of the order passed by this Court. Further, co-accused Pankaj Rajmal Nerkar and others have thereafter filed Criminal Revision Application No.50/2020 before this Court, raising a contention that there is no compliance under Section 226 of Cr.P.C. by the trial court and the charge has been framed and the matter is proceeded. Hurdles were raised, according to the record, by the co-accused, by not even engaging Advocates of their choice and by order dated 12th March, 2020 for the points raised therein by the petitioners, this Court has stayed further proceedings in Sessions Case No.96/2018 till conclusion of the Revision. It is stated that the aid Revision is still pending and, therefore, there is absolutely no likelihood that the trial would commence in such pandemic situation also. The applicant had approached the Trial Court with an application to expedite the trial and then when the trial did not commence, he exercised the liberty that was granted to him in the Bail Application by this court by filing an application under Section 439 of Cr.P.C. That application also

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came to be rejected by the learned Additional Sessions Judge, Jalgaon on 6.1.2021 and, therefore, the applicant is before this Court. He is also seeking bail on medical ground.

3. Heard Shri RS Deshmukh, i/b Advocate DR Deshmukh for applicant; learned APP Shri NT Bhagat for Respondent-State well assisted by Advocate BS Deshmukh for complainant.

4. Apart from what has been reflected earlier regarding expeditious hearing and how the matter cannot proceed further in view of the stay now granted by this Court in the Revision; the learned Sr.Counsel representing the applicant, submitted that the applicant is suffering from various ailments and is taking treatment with Dr.Ulhas Patil Medical College and Hospital, Jalgaon. The ailments for which he is taking treatment can not be issued in Government hospital. The applicant is on heavy antibiotics, steroids, pain killers and a such, his immunity is decreased. He is now prone to infection of COVID-19 virus and with the ailments he is suffering, if he is infected, it would be fatal to his life. The medical certificate and documents have been annexed. The learned Sr.Counsel further submitted that the investigation is complete and charge sheet is also filed. The contents of the charge would show that the case is dependent on circumstantial evidence. There was strong enmity between the

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informant and the applicant and, therefore, possibility of false implication cannot be ruled out. There are material documents and evidence that the applicant to prove his defence of alibi. Further, the evidence of PW 1, i.e. the informant, is also recorded and, therefore, there is no question of tampering with the evidence of the prosecution. The applicant is ready to abide by any terms of the bail.

5. Per contra, learned APP, well assisted by learned Advocate appearing for the informant, strongly raised objection. It is submitted that the applicant is presently taking treatment and, therefore, there is no necessity that he should be released on bail. The manner in which the offence has been committed, is required to be considered. There is no question of enmity between the present applicant and the informant. The informant is serving as Sports Teacher with DS Patil College at Erandol and the incident had taken place on 4.9.2018 when District Level Kabaddi competition of the girls was organized. Co-accused Pankaj Nerkar had behaved with some of the girls in indecent manner and, therefore, he was scolded by the informant. At that time, said Pankaj had given threat, after abusing the informant, that he would be killed. Thereafter on 6.9.2018 he came home around 3.15 pm. Around 8.30 to 9.30 PM, his mother heard some noise in front of the house. At that time, when he came out, he saw present applicant and 9 other persons, armed with knife,

iron pipe and bricks. Present applicant was known to the informant. The informant asked him as to why all of them are pelting stones at his house. Nobody was in a mood to listen and they were giving threats that he would be eliminated. Present applicant told Pankaj Nerkar that he should eliminate the informant. Then Pankaj took out knife and came towards the informant to stab. At that time, informant's cousin brother and neighbour intervened, but Pankaj Nerkar's blow of knife hit the stomach of cousin brother – Aabaji. Present applicant had then took out knife and stabbed neighbour Umesh. The co-accused had then assaulted Umesh with iron rod on his head. After accused persons saw that Aabaji and Umesh were lying in pool of blood, they fled away. The injured persons were initially taken to Apex hospital, Jalgaon. They were not in a position to speak and, therefore, the informant lodged the report with Ramanand Nagar police station under Sections 307, 143, 148, 149 of IPC with Section 4 punishable under Section 25 of the Arms Act, which was then transferred to Erandol police station. Umesh died on 7.9.2018 and, therefore, offence under Section 302 came to be added. There are statements of eye-witnesses and the medical report support the ocular evidence. There is discovery at the hands of the present applicant and co-accused and, therefore, it cannot be stated that the case is based on circumstantial evidence. The applicant does not deserve any kind of sympathy.

6. At the outset, it can be seen that the case is not dependent on circumstantial evidence, but the informant himself is eye-witness so also the other witnesses. Specific role has been attributed to the present applicant that he had assaulted Umesh, who has later on expired. The weapon is also recovered from accused Pankaj Nerkar. Pankaj Nerkar has discovered two knives under Section 27 of the Indian Evidence Act. Therefore, there appears to be prima facie evidence against the present applicant. However, the applicant is also seeking bail on medical ground. Further, it will not be out of place to mention here that taking into consideration the evidence that is collected, it appears that this Court on 6.8.2019 had allowed the applicant to withdraw the bail application with liberty to approach the Trial Court for bail, if the trial does not commence within six months. No doubt, this Court had expedited the trial, but it was not made time-bound. Therefore, after the said order was passed, it appears that the charge was framed and evidence has commenced. Under such circumstance, the liberty that was granted could not have been strictly used by the applicant to file fresh bail application under Section 439 of Cr.P.C. In the bail application itself, the applicant has stated that evidence of the informant has been recorded. That means the trial has commenced. A copy of the Roznama was directed to be produced on record and accordingly it is produced. Perusal of the Roznama would show that many times the accused persons, who

are in jail from the said case, are not produced from the jail and that is the main ground for adjourning the matter. Another fact that is also required to be considered is that some of the co-accused are also applying pressurizing tactics as they had filed applications for adjourning the matter as they wanted to file application for transfer of the case from that Court. Part of the testimony of PW 1 was recorded on 5.3.2020. No doubt, strictly speaking, it may appear that the recording of evidence has started after six months period that was granted by this Court on 6th August, 2019. But, it is to be noted that who would have been responsible for delay in trial during the said period of eight months, can be seen from the contents of the Roznama. In a way, short dates were given; yet some of the accused had consumed time to engage advocates of their choice. Even this applicant appears to have engaged advocate on 30.12.2019. That means when he was before this Court, he had painted a picture that everything is said before the trial court and there are no any hurdles in the trial. But it appears that many accused persons had not even engaged the advocates of their choice. Then how the trial could have begun within six months from the date of the order passed by this court. The applicant cannot take advantage of that liberty.

7. It was tried to be contended that in spite of the stay granted by this court, the further proceedings have been taken up by the

concerned Court. Important point to be noted is that the stay has been granted by this Court on 12th March, 2020. Thereafter, evidence has not been recorded. But certain applications appear to have been decided by the Court. Further, entry of receiving the Writ of stay appears to have been reached the concerned Court on 1.7.2020. Thereafter, there is absolutely no recording of evidence. So also it can be certainly said that thereafter lockdown was declared due to pandemic situation and the work of recording of evidence is virtually stopped. Therefore, there appears to be no such reason, which can be considered as regards merits of the case are concerned, which would prompt discretion to be exercised in favour of the applicant.

8. Now, turning towards the medical ground that has been raised, it is to be noted from the Certificate issued by Dr.Ulhas Patil Medical College and Hospital, on 14.12.2020 that the applicant is suffering from hypertension since last fifteen years and diabetes from last five months. It is stated that the applicant is also suffering for lumbar spondylitis since last years. All these ailments cannot be said to be dangerous. But then it is also stated that the applicant had complained about chest pains and and poor urine output for which kidney function test was done and it showed high serum creatine suggestive of acute kidney injury. It is stated that he needed hemodialysis. He also needs nephrologist's intervention and

treatment. He has produced the medical papers on record including tests those have been conducted and also fact that the applicant's treatment papers as he is still with the same hospital. Interesting point to be noted is that when the Trial Court had also called report from the said hospital, said certificate dated 14.12.2020 was given. It appears that the applicant gave one certificate and from the same doctor. The Jail Superintendent had also filed the medical report of the same doctor having same date. However, both these reports were not similar. It has been observed by the Trial Court that there is suppression of certain facts by the doctor himself. This court also had called upon report from the Superintendent of Jail and then certificate issued on 15.3.2021 by CMO, Dr. Ulhas Patil Medical College and Hospital, Jalgaon has been given. It showed that even Angiography was done; yet the applicant has complained of chest pain and it also appears that since 26.11.2020 till today the applicant is in the same hospital. As to when fresh clinical tests have been done on the applicant is absolutely not mentioned in respect of his heart. Same figure in respect of Serum creatinine was quoted. But current position is to be 5.7 mg/dl. It is stated that the applicant is currently on Hemodialysis. With such kind of long treatment and hospitalization, how same result would persist is a question. It also appears from the communication by the Superintendent of Jail that the concerned doctors from Dr. Ulhas Patil Medical College & Hospital, are not giving proper

information regarding present condition of the applicant either to the Superintendent of Jail or to the concerned Court. This is highly objectionable. The concerned doctor should understand that the present applicant is under-trial prisoner and he is in judicial custody of the concerned Court. He should periodically send report regarding the health condition of the patient. Without getting further orders from the Court, how the applicant is continued to be admitted in the hospital itself is a question and the role of the Superintendent of Jail is also objectionable in this case. It appears that he is not paying proper attention. The letter issued by the Superintendent of Jail to CMO, Dr. Ulhas Patil Medical College and Hospital on 12.3.2021 clearly shows that the jail authorities were kept in dark as to why he was admitted in the hospital. Further, it can be seen from the order passed by the Trial Judge that political persons are involved in those offences. All these things can happen only when there is a political angle to the case. There is absolutely doubt of the authorities as to on which ground and why the applicant was admitted in that hospital. Further there appears to be no proper communication as to who is bearing the charges of that treatment of the present applicant. Everything appears to be fishy and, therefore, even on medical ground, when present Serum creatinine of the applicant is reduced and the treatment can also be given to him from Civil hospital, there is no necessity to exercise any kind of discretion

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when on merits there appears to be direct evidence.
Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

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