

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.151 OF 2021

1. Bharat s/o Himmat Chaudhari
 2. Chetan @ Bhaiyya s/o Bharat Chaudhari
- ... **Applicants**

Versus

The State of Maharashtra

... **Respondent**

.....

Mr. A. R. Devakate, Advocate for applicants.
Mr. A. M. Phule, APP for respondent – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 4th March, 2021
Pronounced on : 16th March, 2021

ORDER :-

. Both the applicants have been arrested in connection with Crime No.101 of 2020 registered with Chopada Rural Police Station, District Jalgaon for the offences punishable under Sections 307, 326, 324, 504 read with 34 of Indian Penal Code. Charge-sheet is filed and the case is committed to the Court of Sessions bearing Sessions Case No.4 of 2021. The present application has been filed for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. R. Devakate for applicants and learned APP Mr. A. M. Phule for respondent – State.

3. It has been vehemently submitted on behalf of the applicants that the allegations levelled in the FIR lodged by informant – Pankaj Sukhdev Kankhare would show that it is a false story. It is stated that the informant and one another person his friend Somnath were assaulted with an intention to kill by the present applicants. In fact, the FIR is based on a concocted story. He has made every kind of allegations. Initially, the offence was registered under Section 326 of Indian Penal Code only, but thereafter Section 307 of Indian Penal Code has been added. There is no direct or indirect evidence against the present applicants. The informant states that he was initially taken to Civil Hospital, Amalner, however, charge-sheet does not contain any such certificate. What history he had given before the said medical officer, which was immediate action, was necessary to brought on record. The prosecution states that the sickle, which is allegedly used in causing injury, has been discovered by applicant No.1, however, the description of the same does not state that there were any blood stains on the said weapon. In fact, present applicant No.1 had registered cross-complaint i.e. Crime No.100 of 2020 for the offences punishable under Sections 324, 504, 506 read with 34 of Indian Penal Code on the same day against the informant and others. It was prior in time and, therefore, there is support in saying that the subsequently lodged FIR is based on

concoction. The applicants have cooperated with the investigation. Under such circumstance, they deserve to be released on bail as it would take long time for their trial to stand.

4. Per contra, learned APP strongly opposed the application and submitted that there is ample evidence against the present applicants. The informant has stated that he and his brother Vilas had sold five she-buffaloes to applicant No.1 about a year prior to the FIR. The amount of four she-buffaloes to the tune of Rs.4,85,000/- was still outstanding. He was not paying the said amount. At about 8.00 a.m. on 10.11.2020, the brother-in-law of the brother of the informant, namely, Himalay Gorakh Birhade resident of village Kathora, taluka Chopada gave a phone call to the informant and stated that applicant No.1 has come to his field for plowing his land and, therefore, informant, his brother – Vilas and their friend Somnath Dhondu Bhil went to Kathora. They asked applicant No.1 to give outstanding amount. He told that he is not having that much amount and also told that they should come to Nimgavhan, taluka Chopada, where he give the amount. Therefore, they went to Nimgavhan bus stand. At about 10.30 a.m., when these people asked applicant No.1 about the money, then he told that he is not having any money. They are free to do whatever they want and he then started abusing. When informant and others asking him not to abuse, at

that time, he took out sickle from his tractor and gave a blow on the left palm of Somnath. When the informant had tried to resist him, applicant No.2 caught hold of both the hands of the informant and he was assaulted by applicant No.1 by said sickle on his head and near abdomen. He had sustained bleeding injury. When Vilas started shouting, the applicants fled away. The Medico Legal Certificate (MLC) shows that informant and Somnath has received grievous injuries. The sickle has been discovered by applicant No.1. That weapon was shown to the medical officer and he has opined that the injuries noted by him on the person of informant and his friend Somnath are possible by such weapon. There are eye witnesses to the incident whose statements have been recorded. Some of the statements under Section 164 of the Code of Criminal Procedure have also been recorded including that of the injured. Therefore, there is ample evidence against the present applicants. They do not deserve to be released on bail.

5. As aforesaid, the contents of the FIR have been already stated and, therefore, now they are not reproduced. Specific role has been attributed by the informant to applicant No.1. As regards the role attributed to applicant No.2 is concerned, it is catching hold of the hands of the informant and the prosecution states that it is to facilitate applicant No.1 to give blows by sickle. The prosecution story is certain

that the injury is caused by sickle which has been used by applicant No.1. There are statements of witnesses corroborating the story that is given in the FIR. It is to be noted that the story is divided into two parts. First is the incident which had allegedly taken place in the field of Himalay Birhade, but then the incident is stated to have taken place in front of bus stand at Nimgavhan. Presence of Himalay has not been stated by the informant and the time of incident appears to be 10.30 a.m. The FIR appears to have been lodged on the next date i.e. 11.11.2020. No doubt, there appears to be some criminal cases pending against present applicant No.1, but that cannot be the ground to reject his application. Facts of each case will have to be considered. The prosecution or the respondent has not come with a specific case that the offence under the present case has been committed while on bail in the other offences by applicant No.1. Now, the investigation is over. Weapon is seized. Statements of witnesses have been recorded. Under such circumstance, the further physical custody of the applicants is no longer required. Therefore, they deserve to be released on bail. Hence, the following order :-

ORDER

- (i) Application stands allowed.

- (ii) Applicants viz. (1) Bharat s/o Himmat Chaudhari and (2) Chetan @ Bhaiyya s/o Bharat Chaudhari, who have been arrested in connection with Crime No.101 of 2020 registered with Chopada Rural Police Station, District Jalgaon for the offences punishable under Sections 307, 326, 324, 504 read with 34 of Indian Penal Code, be released on P R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- (iii) They shall not tamper with the evidence of the prosecution in any manner.
- (iv) They shall not indulge in any criminal activity.
- (v) If they indulge in any criminal activity, especially against the human body under Chapter 16 of Indian Penal Code, then prosecution is at liberty to make application under Section 439(2) of the Code of Criminal Procedure.
- (vi) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]