

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.165 OF 2021

- 1) Sayyed Mohsin @ Mosha Sayyed Jafar,
Age 23 years, Occupation Labour,
R/o Mushafirshah Mohalla, Basmath
District Hingoli.
- 2) Hafiz Khan Umar Khan Pathan,
Age 21 years, Occupation Labour,
R/o Len Talab, Basmath District
Hingoli.

...Applicants

VERSUS

The State of Maharashtra,
Through Police Station, Basmath
Town.

...Respondent

....
Advocate for Applicants : Mr. Shaikh Faiyazuddin
APP for Respondent-State : Mr. D. S. Jape.

....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
02-03-2021.**

**Date of Pronouncing The Order :
16-03-2021.**

ORDER :

1. Present applicants have been arrested on 27-12-2020 and 28-12-2020 by Basmathnagar City Police Station District Hingoli, in connection with Crime No.352 of 2020, for the offences punishable

under Section 307, 326, 323, 34 of Indian Penal Code read with Section 4/25 of Arms Act. They have filed present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. Shaikh Faiyazuddin for applicants and learned Additional Public Prosecutor Ms. D. S. Jape for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the present applicants have been shown as accused No.3 and 4 though their full name has not been stated in the First Information Report. First Information Report has been lodged by one Shubham Raju Patange when he was admitted with Dr. Dasre Orthopaedic And Dental Hospital, Basmath District Hingoli on 20-12-2020 in respect of an incident that had taken place at about 21.30 hours on 25-12-2020. He states that he was along with his friend Navnath Madhukar Bavge and they had parked their motorcycle by the side of the road for answering natures call. He was standing near motorcycle and Navnath had gone for answering natures call when four persons known to them had come, out of them accused No.1 Akbar assaulted him by sword which had hit his head. The informant further says that the other three persons had assaulted

him by iron rod / pipe on his right hand elbow, wrist, left shoulder and left as well as right leg. He has got his right and left leg fractured. Assault was made on Navnath also who had received injury to his left elbow. The role attributed to the present applicants is assault by iron pipe on shoulder and legs. The weapons have been seized. In fact, said Shubham and Navnath had also assaulted accused No.1 Akbar and offence under Section 326 of Indian Penal Code has been lodged against them on 19-05-2020 bearing Crime No.149 of 2020. Applicant No.2 is eye-witness to the alleged incident but he has not taken part in any assault, but to pressurize the applicant No.1, name of applicant No.2 has been inserted. Now the informant has been discharged from the hospital and he is discharging his normal duty. Informant and Navnath are in fact habitual offenders and there are other offences also which are pending against them. Section 307 of Indian Penal Code has been wrongly invoked as there appears to be no intention to kill. The applicants have no criminal antecedents. There is delay in lodging the First Information Report and, therefore, the applicants be released as it would take long time to stand their trial.

4. Per contra, the learned Additional Public Prosecutor strongly

opposed the application and submitted that the injuries those were sustained by the informant are serious in nature. In all five injuries were noted, one was fracture to right tibia and another was deep CLW over skull occipital region. These two are the grievous injuries and then he had also received puncture wound to right leg, multiple puncture wounds of left leg and contusion over right elbow. They are simple injuries. The age of the injuries was half an hour. That means, he had gone to police station and then he was referred to Government Hospital immediately. There is no question of delay in lodging the First Information Report. The weapon that is used for causing injury is sword and iron pipes which can be termed as deadly weapons. Further the situs chosen would decide whether there was any intention to kill or not. Definitely injury to the occipital region can be considered as injury to the vital organ. The co-accused are history-sheeter and, therefore, the manner in which the offence has been committed, disentitles the applicants from getting bail.

5. As aforesaid, the facts giving rise to the First information Report have already been noted, they are not repeated again. But it can be said that the informant has stated about the injuries caused

to him by the three persons holding iron pipe. If we then perused the First Information Report, it appears that though the informant was knowing the present applicants also, in the main body of the first Information he has not attributed specific role by giving names of the present applicants, however in the concluding para he has mentioned the names of the present applicants in short, that is only 'Moshu' and 'Hafiz', and in bracket it is stated that he does not know the full name. Even if we consider the contents of the First Information report as it is, it is stated that with the iron pipe the other three persons had assaulted the informant on his right elbow which has resulted in covert injury and also covert injury to his left shoulder and left leg. The fracture has been caused to the tibia. Though he states that there is fracture to the left leg near ankle, there is no such mention in his Medico Legal Certificate. Therefore, independently if we consider these injuries, they could not have caused death and, therefore, at the most taking into consideration the nature of the injury as grievous, it would attract Section 326 of the Indian Penal Code. Now as regards Section 307 of Indian Penal Code is concerned, it is required to be attributed to accused No.1 in view of the fact that he had assaulted the informant by sword and the injury is caused to the skull occipital region. The offence under

the Arms Act can also be attributed to him. Now as regards the common intention is concerned, the evidence will have to be led. Perusal of the police papers would show that there is discovery of sword by accused Akbar and present applicant No.2 is stated to have discovered two iron pipes. The eye-witnesses have also stated that the present applicants had assaulted injured, informant on his hands and legs. Injured Navnath has also made such statement. His injury is stated to have been caused by co-accused Akbar. Therefore, when substantial part of the investigation appears to be over, and it would take long time for the trial to stand, with this connection of evidence the applicants deserve to be released on bail. Hence, following order.

ORDER

1) Applicants No.1 Sayyed Mohsin @ Mosha Sayyed Jafar and No.2 Hafiz Khan Umar Khan Pathan, arrested in connection with Crime No.352 of 2020, registered with Basmathnagar City Police Station District Hingoli, for the offences punishable under Section 307, 326, 323, 34 of Indian Penal Code read with 4/25 of Arms Act, they be released on P.R. of Rs.50,000/- each (fifty thousand) with two solvent sureties of Rs.25,000/- each (Twenty-five thousand).

- 2) The applicants shall not tamper with the evidence of the prosecution in any manner.
- 3) They shall not indulge in any criminal activity.
- 4) Before submission of bail papers, the applicants should give complete address of their residence with their mobile numbers. So also they should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 5) The applicants to attend Basmathnagar City Police Station District Hingoli, on every Sunday in between 09.00 a.m. to 12.00 noon and maintain diary of his attendance duly countersigned by the Police Station officer, till filing of the charge-sheet.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-