

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.176 OF 2021

WAMAN JAIWANTRAO BODKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Mr. P.R. Katneshwarkar, Advocate for applicants

Mrs. D.S. Jape, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th MARCH, 2021.

ORDER :

1 Both the applicants have been arrested on 28.12.2020 and 30.12.2020 respectively, in connection with Crime No.406/2020 registered with Mukhed Police Station, Dist. Nanded, for the offence punishable under Section 307, 326 read with Section 34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. P.R. Katneshwarkar for applicants and learned APP Mrs. D.S. Jape for the respondent.

3 It has been submitted on behalf of the applicants that the First

Information Report has been lodged by the father of the injured and he says that the reason behind the assault on his son by the present applicants is the quarrel between the applicants and his son, on account of distribution of khichdi (kind of rice) to school going children about a year ago. This appears to be an exaggeration. Now, the substantial part of the investigation is over. The injured is also discharged. The Investigating Officer has shown that the weapons allegedly used in the commission of the crime have been discovered by the present applicants. Under such circumstances, the further physical custody of the applicants is not required, and therefore, they deserve to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that there was enmity between the injured and the present applicants, on account of distribution of khichdi in the earlier year i.e. in 2020, but the real reason has emerged in the statement of the injured. He has stated that he had taken objection to the distribution of the said khichdi, of which the contract was with the wife of applicant No.1 and on one day in the previous year, there was food poisoning to the students, as lizard had fallen in the khichdi. Even at that time, there was quarrel between the present applicants and the injured, and therefore, on the day of incident the injured was assaulted by applicant No.1 by Katti and by applicant No.2 by

knife. They have discovered those weapons under Section 27 of the Indian Evidence Act. The Medico Legal Certificate of the injured would show that he has received four injuries; 1) CLW over right parietal region, 2) CLW over left parietal occipital region, 3) CLW over left hand dorsal aspect and 4) black eyes. Out of them three are grievous. This was the provisional certificate and it is stated that those injuries would have been caused by blunt and sharp object. The C.T. scan showed cerebral contusion involving left fronto-temporo-parietal region with left fronto-temporo-parietal extradural hematoma. The discharge card issued by Yashosai Hospital, Nanded would show that he was admitted there on 28.12.2020 and was discharged on 05.01.2021. There are statements of witnesses, who have seen the present applicants assaulting injured Balaji. Therefore, when there is ample evidence, the applicants do not deserve to be released on bail.

5 From the police papers it appears that substantial part of the investigation is over. The First Information Report has been lodged on 28.12.2020 and applicant No.1 came to be arrested on same day. However, it appears that the applicant No.2 came to be arrested on 30.12.2020. Though informant has not stated detailed reason of dispute, injured Balaji has tried to say that and it is stated that it was due to the objection taken by him, when there was food poisoning to the students after eating khichdi prepared by the

wife of the applicant No.1. However, it is to be noted that he has not given the approximate date or month when that incident had taken place. He has only used the word “last year” (मागील वर्षी). The police papers do not show that there is statement from the said Zilla Parishad School, where this incidence of food poisoning had taken place and documents regarding grant of tender to the wife of the applicant No.1 yet not collected.

6 No doubt, there appears to be statements of witnesses including the injured coupled with the medical report and the discovery. However, taking into consideration the fact that it would take long time to stand the trial of the applicants and the substantial part of the investigation is over, they deserve to be released. However, taking into consideration further that they are from same village, stringent conditions are required to be imposed. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Waman Jaiwantrao Bodke and 2) Kiran Wamanrao Bodke, who have been arrested, in connection with Crime No.406/2020 registered with Mukhed Police Station, Dist. Nanded, for the offence punishable under Section 307, 326 read with Section 34 of the Indian

Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit 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.

6 They shall not enter the jurisdiction of village Nandgaon (Pade) till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number to the concerned Police Station as well as to the Trial Court. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)