

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

BAIL APPLICATION NO.288 OF 2021

AKASH @ BALA CHANDRABHAN DANKE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. B.P. Pande, Advocate for the applicant

Mr. P.G. Borade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 04th MAY, 2021

PRONOUNCED ON : 08th JUNE, 2021.

ORDER :

1 Present applicant is the accused No.2 in Crime No.121/2020 registered with Harsul Police Station, Dist. Aurangabad, for the offence punishable under Section 307, 323, 324, 504, 143, 147, 148, 149 of the Indian Penal Code, 1860, under Section 4 read with Section 25 of the Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951. He has filed this second application before this Court for bail under Section 439 of the Code of Criminal Procedure, 1973. It will not be out of place to mention here that his earlier bail application i.e. Bail Application No.717 of

2020, which was decided by this Court on 28.08.2020, was disposed of as withdrawn. However, taking into consideration his age as 19 years, liberty was granted to him to move again after six months and then the case was to be decided on its merits. Therefore, he says that he has moved this Court again.

2 Heard learned Advocate Mr. B.P. Pande for the applicant and learned APP Mr. P.G. Borade for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the co-accused have been released by this Court in the said Bail Application No.717 of 2020 and, therefore, on the ground of parity he deserves to be released on bail. The First Information Report has been lodged by one Santosh Lala Kakade. He says that his paternal aunt Radhabai Puse stays at Rajnagar Ambarhil. When the informant had gone for dinner at the house of his cousin sister (Radhabai's daughter), sister Pratibha received phone call from Radhabai stating that a dispute has taken place with the neighbour Danke i.e. the family of present applicant and she is frightened, so also, she called to Pratibha to take her. Informant and Pratibha went on motorcycle to Radhabai's house. When informant was making inquiry, at that time, present applicant, who has been referred by his nickname as 'Bala', came along with

other co-accused persons. Pratibha asked them, as to why they have picked up quarrel with Radhabai and brother Ganesh. At that time, all the accused persons started abusing and assaulting Pratibha and the informant. Present applicant had assaulted informant with sword on his head. He has 12 stitches to the injury, so also, present applicant had inflicted blow on the right palm of Pratibha, virtually cut her little finger resulting in injury. Co-accused Ravi assaulted informant on his right wrist with knife. Therefore, FIR says that the informant had received such a injury which had 12 stitches, however, his Medical Legal Certificate does not say so. The provisional and final injury certificates show only two injuries, which are stated to be simple. Further, as regards injury certificate of Pratibha is concerned, it is stated that the right hand finger has been unhinged and it is the only grievous injury that is shown. Further, in respect of the same incident, cross complaint was filed against Mohan Puse and others including Radhabai and Mangal, who is the daughter of Radhabai, vide Crime No.122/2020 with the same Police Station, for the offence punishable under Section 143, 147, 149, 323, 324, 427, 452, 504 of the Indian Penal Code. The informant's family had received severe injuries in the said incident. The injuries noted as it is on the certificate of informant as well as Pratibha will not attract provisions of Section 307 of the Indian Penal Code. The investigation is over and charge sheet is filed. Nothing has been recovered at the instance of the present applicant and the

remand reports would show that the prosecution is blaming the present applicant for non cooperating the investigation, however, now entire evidence is over, present applicant is being aged 19 need not be kept with hardened criminals. He is taking education and has been falsely implicated. Therefore, he deserves to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that though the injury certificate, which has been produced along with the charge sheet, states that the present applicant had allegedly suffered simple injury, but if we consider the remark column, then it is definitely stated that he was referred to surgery department. The final certificate, which has been issued on 08.06.2020, states that he had suffered two injuries - one is blunt trauma with Contused Lacerated Wound to the right hand wrist and the second is Contused Lacerated Wound with forehead, which was 2 x 1 x 0.5 c.m. in size. Further, another document showing clinical notes in respect of injury of the present informant would show that he had head trauma with CLW over forehead of size 6 x 0.5 x 0.5 c.m. It is not clear as to how many stitches were applied but there is no reason to disbelieve what the informant is saying, at this stage. That blow was definitely given on head, that too with sword. Everything would be explained at the time of trial. Further, with the same sword the present applicant had cut the little finger of

Pratibha and her medical document supports those statements. Even at the age of 19 he has used sword like weapon and in fact, he has absolutely no cooperated with the investigation. Twice or thrice he had tried to contend before police that he would show the place, but even after taking the police and the panchas to the hill for a distance of about a kilometer, the weapon could not be found. So also, the knife which was used by the co-accused Ravi could not be found as he has also not cooperated. The present applicant was absconding for about 2 days though co-accused were arrested, therefore, possibility of he getting absconding cannot be ruled out. He has used deadly weapon like sword and, therefore, he does not deserve sympathy. His case from the co-accused is different and, therefore, he cannot be said to be entitled to get bail on the ground of parity also.

5 At the outset, it is to be noted that it appears from the earlier order that after the disinclination has been shown by this Court to consider the bail application of the present applicant it was withdrawn. However, only for the sake of sympathy, taking into consideration the fact that the applicant is 19 years old, it was stated that after six months his application would be considered on merits. It will not be out of place to mention here that his Bail Application No.879 of 2020 was rejected by learned Sessions Judge, Aurangabad on 09.07.2020 and, therefore, he had approached this Court by

filing Bail Application No.717 of 2020, which was decided on 28.08.2020. Though the words used by this Court, “liberty is granted for him to move again after six months, then his case would be considered on merits” does not say any specific word that liberty was granted to the applicant to approach this Court directly once again; yet as per the procedure the applicant ought to have knocked the doors of the Sessions Judge once again. When already the entire charge sheet was available before this Court when the earlier order was passed and that application came to be withdrawn after disinclination, it cannot be said that the merits were not considered at all. Even after consideration of the merits, it can be seen that the allegations against the present applicant though he is 19 years old or he has used deadly weapon like sword, which has not only caused injury to the forehead of the informant, which is definitely the vital organ of the human body and thereafter it has resulted in amputation of little finger of Pratibha, he does not deserve to be released on bail. As regards cross case is concerned, it is to be noted that it was subsequently lodged. There are no allegations against the present applicant. As per the present FIR, only because the paternal aunt was in difficulty he had gone along with his sister. Sister was asking something, in that process the present applicant had not taken part; yet he has been assaulted by the present applicant with sword. It also appears from the remand reports that present applicant was absconding and he has not

cooperated with the investigation. These are also the additional points which disentitle him to be released on bail. Hence, the application stands disposed of as rejected.

(Smt. Vibha Kankanwadi, J.)

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