

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.309 OF 2021

Mujjammil Fakir Mohammad Pathan,
Age 29 years, Occupation Business,
R/o Plot No.72, Land Gut No.103,
Near Saroj English School, Shadab
Colony, Mitmita, Aurangabad.

...Applicant

VERSUS

- 1) The State of Maharashtra,
Through P.P. High Court,
Aurangabad.
- 2) The Police Inspector,
Police Station Chawani,
Aurangabad Tq. And Dist.
Aurangabad.

...Respondents

Advocate for Applicant : Mr. S. S. Jadhav h/f
D. K. Dagadkhair

APP for Respondent-State : Mr. A. M. Phule.

CORAM : SMT.VIBHA KANKANWADI, J.

ORDER : 09-04-2021.

ORDER :

1. Present applicant has been arrested in connection with Crime No.68 of 2021, dated 22-02-2021, registered with Chhavani Police Station, Aurangabad District Aurangabad, for the offences punishable

under Section 326 (A), 328, 323, 504, 34 of Indian Penal Code. He has filed present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. S. Jadhav holding for Mr. D. K. Dagadkhair and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. Informant is his real brother, however there is enmity between them. The informant is greedy about the amount which the father is receiving towards pension. He was harassing the father. In fact prior to the incident that is on 24-09-2020 the applicant had given non-cognizable report against the present informant. In the said report the present applicant had clearly stated that accused therein i.e. present informant had demanded amount to the applicant. When applicant refused, at that time the applicant as well as his father was abused and threatened by the informant. Thereafter, another non-cognizable report was given on 14-02-2021 under Section 323, 504, 506 of Indian Penal Code on the same ground that is demand of money from father, at that time the informant had come after

drinking liquor. Even the photocopy of the threats given on the mobile What's App of the father have been given, which would show that informant Rizwan had intention to implicate the present applicant. In fact on the day of incident i.e. 21-02-2021, informant had come to the house of applicant where their father also resides and he had picked up the quarrel. Applicant and others had gone to attend a marriage, but when they came to know about that the informant going to their house, they returned and, thereafter, there was assaulted by the informant to the applicant's father and brother-in-law. He was uncontrollable and, therefore, the liquid which was there in the plastic can which was in fact a battery residue was thrown to disarm the informant, it was not Acid at all. Now the informant is out of danger and has been discharged from the hospital. If he would not have been stopped, he would have assaulted many others also. However with the ill intention he has given a concocted story. Major portion of the investigation is over. Further physical custody of the applicant is not required and, therefore, he deserves to be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application and submitted that there is evidence against the

applicant that is collected by the police and Acid attack is one of the heinous crimes which does not require any kind of sympathy.

5. At the outset, from the documents those have been produced on record, it appears that there is dispute between the two brothers. The informant is saying that the father is getting pension of Rs.70,000/- and since last four months prior to the First information Report, the father was giving amount of Rs.10,000/- per month to the informant for household expenditure. According to the informant, the present applicant was resisting the move by the father to help financially to another son, and according to the informant the applicant was not allowing him to meet the father. Perusal of the police papers would show that it is not a factual aspect. The father has given a statement stating that it was because of the moves those were made on the day of incident further injuries were avoided. He has specifically stated that the present informant was uncontrollable and he has caused injuries to the brother-in-law of the applicant. Now the investigation appears to be substantially over. The informant is also discharged. Perusal of the First Information Report would show that there are no such ingredients which would attract Section 328 of Indian Penal Code.

Section 328 of Indian Penal Code requires forcible administration of poisonous substance. Throwing of Acid like liquid on the face does not amount to administration of poison. Further, it is yet to be proved as to whether the said liquid was Acid or not ? Under such circumstance, though it appears that the informant was hospitalized, yet the present applicant deserves to be released on bail in view of the evidence collected. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Mujjammil Fakir Mohammad Pathan, in Crime No.68 of 2021, under Section 326-A, 328, 323, 504 read with 34 of the Indian Penal Code, be released on P.R. of Rs.30,000/- (thirty thousand) with two solvent sureties Rs.15,000/- each (fifteen thousand).
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of

Chapter I of Criminal Manual, whichever are applicable.

6) The appellant to attend Chhavani Police Station, Aurangabad District Aurangabad, on every Monday and Thursday, in between 10.00 a.m. to 02.00 p.m., till filing of the charge-sheet.

7) Bail before Learned Additional Sessions Judge, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vj gawade/-