

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 BAIL APPLICATION NO.322 OF 2021

SUBHASH SAHEBA @ DIGRYA FULMALI

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.B. Narwade, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th APRIL, 2021.

ORDER :

1 Present applicant came to be arrested in connection with Crime No.510/2020 dated 30.07.2020 registered with Pathardi Police Station, Tq. Pathardi, Dist. Ahmednagar, for the offence punishable under Section 4/25 of the Indian Arms Act, 1959 under Section 143, 147, 148, 149, 188, 269, 270, 307, 323, 324, 325, 326, 427, 504, 506 of the Indian Penal Code, 1860, under Section 2, 3, 4 of Epidemic Disease Act, 1897, under Section 51(B) of the Disaster Management Act, 2005 and under Section 11 of Maharashtra COVID-19 Regulation Act, 2020. He has filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. N.B. Narwade for the applicant and learned APP Mr. A.M. Phule for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant is innocent person and has been falsely implicated. There was cross complaint. The cross First Information Report has been lodged by one Vishnu Balasaheb Dhakne on the same day i.e. on 30.07.2020 at 22.52 hours with the same Police Station vide Crime No.509/2020. The FIR against the applicant has been lodged at 23.37 hours. There is no direct, indirect or circumstantial evidence against the applicant. It is revealed by the informant Prashant Mandlecha that the present applicant had come in vehicle and had assaulted his relatives by iron rod and pipes. Nothing has been recovered at the instance of the present applicant, though he was sent in police custody. Whatever seizure is there it is from the spot. The informant and others, who are the accused in cross complaint, had approached this Court for anticipatory bail, however, it was rejected, but it has been granted by the Hon'ble Apex Court now. Under such circumstance, the further physical custody of the applicant is not required. He deserves to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that there is specific role attributed to the present applicant. It is stated that the present applicant and co-accused, who were holding wooden

sticks, iron rods and iron fighter, have also received severe injuries. Possibility of another offence of similar kind cannot be ruled out if the applicant is released on bail.

5 It can be seen that one Prashant Prakash Mandlecha had lodged the said report. Though it appears to be given on 29.07.2020, it has been registered at 23.37 hours on 30.07.2020. Why it took to police to register the offence when it was already reduced into writing, is a question. But perusal of the FIR would show that the alleged incident had taken place at about 8.30 p.m. on 28.07.2020. If the time and date of the occurrence is considered, then even the FIR taken on 29.07.2020 would also appear to be belated. Same is the condition with the cross FIR lodged by Vishnu Dhakne. Now, as regards present applicant is concerned, it is stated that he has used either wooden stick or iron rod or iron fighter. FIR is silent about a specific weapon for the present applicant. Further, it is also not clear in the FIR as to who was the relative of the informant, who received injuries due to assaulted by the applicant. At one stretch it appears that his relatives are Sanjay, Prafull, Sachin and Kantilal, who had come there, but the informant is not specific amongst them who had received the injury or whether the informant intended to say that applicant had assaulted all those his relatives. Police papers say that the statements of these witnesses have been taken, but there

also the specific statements are not appearing. The alleged weapon used by the applicant is stated to be seized and, therefore, the further physical custody of the applicant is not required for the purpose of investigation. Taking into consideration the cross cases and almost the completion of investigation as against the present applicant, he deserves to be released on bail. Hence, the following order.

ORDER

1 Application stands allowed.

2 Applicant Subhash Saheba @ Digrya Fulmali, who has been arrested, in connection with Crime No.510/2020 dated 30.07.2020 registered with Pathardi Police Station, Tq. Pathardi, Dist. Ahmednagar, for the offence punishable under Section 4/25 of the Indian Arms Act, 1959 under Section 143, 147, 148, 149, 188, 269, 270, 307, 323, 324, 325, 326, 427, 504, 506 of the Indian Penal Code, 1860, under Section 2, 3, 4 of Epidemic Disease Act, 1897, under Section 51(B) of the Disaster Management Act, 2005 and under Section 11 of Maharashtra COVID-19 Regulation Act, 2020, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

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 He shall attend the Pathardi Police Station, Tq. Pathardi, Dist. Ahmednagar, twice in a week i.e. on every Tuesday and Friday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

6 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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