

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.383 OF 2021

SHAIKH MATIN @ MATYA S/O SHAIKH AZIZ
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. A. K. Bhosle, Advocate for the applicant.
Mr. A. M. Phule, APP for the respondent.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29-04-2021

ORDER :-

1. Present applicant came to be arrested on 15.02.2021 by CIDCO Police Station, Dist. Aurangabad in connection with Crime No.68 of 2021 for the offences punishable under Sections 307 read with 34 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. K. Bhosle 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 substantial part of the investigation is over. The recovery has also been done at the instance of co-accused. It is stated in the FIR lodged by

one Sultan Ali Chous that his another son Naser found his brother Taleb in injured condition near Vaishali Dhaba in Misarwadi, Aurangabad. Naser had got that information on telephone around 5.30 p.m. on 14.02.2021. It was also told to Naser that those persons were taking injured to CIDCO Police Station, and therefore, the informant and his son Naser went to CIDCO Police Station and found Taleb in injured condition in auto-rickshaw. Police immediately referred him to GHATI Hospital. Informant says that in auto-rickshaw, when he made enquiry with Taleb as to how he was received injuries, it was told that the present applicant and one Hasan Sajid Patel as well as Shaikh Mobin Shaikh Aziz had assaulted him by knife on his both hands and both thighs. He, thereafter, became unconscious. He was then admitted to hospital and since he could not lodge any report on that day, father has lodged the report. It is contended by the learned Advocate for the applicant that co-accused Hasan Sajid Patel was released by learned Additional Sessions Judge, Aurangabad on 04.03.2021, however, the bail application of the present applicant came to be rejected. Role attributed to both of them is equal and, therefore, on the ground of parity, the applicant should also be released on bail. Therefore, the further physical custody of the applicant is not required.

4. Per contra, the learned APP has strongly objected the application and submitted that the ground of parity is not available to the present applicant. The role attributed to the co-accused is different. It is stated in the FIR that the present applicant had assaulted Taleb by knife on his head, whereas the others have assaulted on his hands and thighs. Intention is then required to be considered. So also, the statement of Taleb is important. The present applicant has criminal antecedents. He is involved in Crime No.441 of 2021 registered with CIDCO Police Station for the offences punishable under Sections 341, 324, 143, 147, 148, 149 of Indian Penal Code, in Crime No.259 of 2020 for the offences punishable under Sections 307, 335(A)(1), 323, 504, 506 read with 34 of Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, so also in Crime No.47 of 2021 for the offences punishable under Section 4/25 of the Indian Arms Act and Section 135 of Bombay Police Act. It is also stated that as regards the present applicant is concerned, proposal for externment is pending. He has no regard for the law and he has indulged himself in offences against body. Therefore, he need not be released on bail.

5. Perusal of the FIR lodged by Sultan Ali Chous would show that whatever he had stated in the FIR was on the basis of the statement made to him by his injured son. Taleb is now recovered and, therefore,

the contents of the FIR, as regards the assault is concerned, may amount to hear say evidence. Importance will have to be given to the statement of Taleb. He says that when he had gone to meet his sister at Misarwadi, he had gone to Vaishali Dhaba. He met his certain friends and, therefore, taking tea. At about 5.30 p.m., the present applicant with three other persons i.e. co-accused came and started abusing Taleb. They were assaulted him by hands initially, but thereafter applicant took out knife and he gave blows on the hands and thighs of the injured. In that process, his knife fell down, it was picked by accused No.2 – Shaikh Mobin. Accused – Hasan Javed caught hold of the hands of the injured and then Mobin had given blows of knife on him. He says that accused No.4 – Sagar Bharaskar was assaulting him by hands, but thereafter he had tried to strangulate him. This statement has been recorded on 17.02.2021, but then on 31.03.2021, his supplementary statement has been recorded. In his supplementary statement, now he is saying that the applicant had taken out the knife and started to give blows on his neck, but it was resisted by him and, therefore, he had received the injuries with the knife on his hands and shoulder. He has also added that Hasan Sajid Patel and Shaikh Mobin Shaikh Aziz had given blows of knife on his thighs and hands. Sagar had also given blows on his head and tried to strangulate him. Hasan had given him threat to kill and

Mobin took out amount of Rs.8,140/- and mobile from his pocket. Interestingly, even after the supplementary statement, it appears that the Investigating Officer has not added any further Section. The injury certificate shows that Taleb had received seven injuries, which are as follows :-

- I) Multiple contuse lacerated wound on head.
- II) Incise wound to left arm.
- III) Incise wound to left elbow.
- IV) Multiple incise wounds to left thigh.
- V) Multiple incise wounds to right thigh.
- VI) Puncture wound to left thigh.
- VII) Blunt trauma on right thigh.

It is to be noted that there is absolutely no injury on his neck. All the injuries are simple, but it is stated that they are possible by sharp and pointed weapon. Present applicant is stated to have discovered a knife and clothes of himself and that of Hasan Sajid Patel under Section 27 of the Indian Evidence Act. Statement of Taleb has been taken under Section 161 of the Code of Criminal Procedure, which appears to be the mix statement of his earlier two statements.

6. Thus, it can be seen that almost similar acts were attributed to accused Hasan Sajid Patel also. At one place, Taleb is attributing the injuries to his head to present applicant and at another statement he

states that those injuries were caused to him by accused – Sagar Bharaskar. Whether offence under Section 307 of Indian Penal Code is made out or not would be considered by the trial Court with the view that all the injuries are simple, but then whether it would have caused death of a person would depend upon the evidence of the expert. Now, nothing is required to be seized from the applicant. Co-accused Hasan Sajid Patel has been released by the learned Additional Sessions Judge, who is almost similarly placed, though the role of the applicant was tried to be segregated by the learned Additional Sessions Judge. Fracture to the nasal bone definitely could not have resulted in death of a person. That injury was highlighted by the learned Additional Sessions Judge.

7. Now, as regards the criminal antecedents of the applicant is concerned, definitely, there appears to be such antecedents, but that cannot be the only ground to reject the present application. Further, as regards the externment proceedings are concerned, the appropriate authority is at liberty to take up whatever due course has been prescribed. Therefore, basically on the ground of parity, the applicant deserves to be released on bail, however, with stringent conditions. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) Applicant – Shaikh Matin @ Matya s/o Shaikh Aziz, who has been arrested in connection with Crime No.68 of 2021 registered with CIDCO Police Station, Aurangabad for the offences punishable under Sections 307 read with 34 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) He shall attend the concerned Police Station on every Monday, Wednesday and Friday between 10.00 a.m. to 2.00 p.m. till the conclusion of the trial.
- IV) He shall not tamper with the evidence of the prosecution in any manner.
- V) He shall not indulge himself in any criminal activity.
- VI) He shall not enter the jurisdiction of Misarwadi till the conclusion of the trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number to the concerned police station and the Trial Court.
- VII) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]