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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.387 OF 2021

Navnath Harishchandra Aatar = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENTS

Mr.NV Gaware, Advocate for Applicant;

Mr.SB Narwade, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 27th April, 2021.

PER COURT :-

1. Present applicant is original accused No.1, who came to be arrested on 4.12.2020 by Karjat police station, District Ahmednagar in connection with CR No.1066/2020 for the offences punishable under Sections 307, 143, 147, 148, 149, 323, 504, 506 r/w 34 of IPC and under Section 4, 25 of Arms Act. He has filed the present application under Section 439 of Cr.P.C.

2. Heard Shri NV Gaware, learned Advocate for applicant and Shri SB Narwade, learned APP for the Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that investigation is now over and charge sheet has been filed, vide RCC No.88/2021 before the JMFC, Karjat. It would take

a long time for committal of the case and thereafter trial. Further physical custody of the applicant is not required for the purpose of investigation. Perusal of the FIR would show that the informant says that present applicant had tried to give blow of sword on the head of the informant, however, he had resisted it, causing injury to right wrist of the informant. If we consider the medico legal certificate of the informant issued by the Medical Officer, Sub-District hospital, Karjat, which was the initial hospital, who had examined the injury of the informant, it says only two injuries. Both are incised wounds on the right wrist. It is stated that probable weapon that is used in the commission of the offence is hard and sharp object. However, the nature of injuries is stated to be simple. Further, it appears that the informant was examined by Asian Noble Hospital Pvt. Ltd., and the injury noted by the Medical Officer was on his right fore-arm. That is only one injury and it stated to be simple. For the simple injuries, in fact, the informant could not have been referred by the Government hospital to a private hospital. Whether this applicant had intention to kill the informant would be revealed by the Trial Court after the entire evidence. The alleged weapon used in the commission of the crime has been seized. Statements of witnesses have been recorded and, therefore, there is no necessity that the applicant, in such a pandemic situation, should be asked to linger in jail. The learned Advocate for the applicant strongly canvassed for release of

the applicant on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that not only in the FIR it is stated, but also all the witnesses, who have seen the incident, that blow was given by the present applicant with intention to kill the informant. However, the informant had resisted and it then caused the injuries to the right wrist of the informant. He has used the sword to cause the injuries, which cannot be said to be ordinary weapon, which can be kept in the house of anybody. When the parties are from the same village and there appears to be rivalry between them, possibility of occurrence of similar kind of offence cannot be ruled out. He does not deserve to be released on bail.

5. At the outset, it can be seen that the investigation is complete and charge sheet has been filed before the learned JMFC, Karjat. Under such circumstance, we can presume that further custody of the applicant is not required for the purpose of investigation and, therefore, we should concentrate on as to what material has been collected against the present applicant. In the FIR, the story that is given is that on 15.11.2020, the applicant and three more persons went to the house of the informant, where the informant was carrying some domestic activities and the informant says that, without any reason, he was abused by the present applicant and three other persons and was

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assaulted by kicks and fist blows. He further narrates that the present applicant and one Pramod Aatar had tried to give blow with the help of iron sword in their hands on the head of the informant, however, the informant resisted them by right hand and, therefore, the blows had caused the injuries to his right wrist. He then says that due to said assault, he got frightened and went inside the house. His brother Shrikant was outside the house. He was assaulted by co-accused Hari Murkute, Dada Murkute and Ashok Murkute by swords and axe and it is stated that others had assaulted Shrikant by iron rod. After giving threats, all of them went away. That means, in the FIR, the informant has tried to attribute some or the other role to 11 persons. However, he does not say that the present applicant had caused any injury to his brother Shrikant and mother Zumbarbhai. Therefore, as to which injuries were sustained by the present informant has to be considered from the medico legal certificates issued by the authorities. As aforesaid, the Government hospital had examined the informant on 15.11.2020 and disclosed that there were two injuries in the nature of incised wounds, one on right fore-arm and another on lower fore-arm. Though it is stated that the injuries were caused by hard and sharp object; yet the nature of the injuries is stated as simple. As regards the medico legal certificate issued by Asian Noble Hospital Pvt. Ltd., it does not disclose that the informant was admitted to the hospital. But, then in the FIR it is stated that he has given the FIR

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after his admission to said Asian Noble Hospital itself. In that certificate, it is stated that there is only one injury, i.e. right fore-arm injury. Cause of injury is stated as assault; age of the injury is stated to be one day and nature of the injury is stated to be simple. Question arises as to why he could have been admitted for the simple injury. This shows that the informant intended to exaggerate the things. Now, as regards whether the present applicant had intention to commit murder of the informant is concerned, it does not appear to be the said fact taking into consideration the nature of the injuries those have been caused. If the blow with two swords by two different persons have been given and it has been resisted on the fore-arm by the informant, then with the force that would have been applied with intention to commit murder, expected injury would be grievous hurt and not simple injury; yet this fact will have to be considered in detail by the Trial Court.

6. Now, the investigation is over, charge sheet is filed and seizure is complete. Under such circumstance, the applicant need not be kept behind the bars, with the evidence that has been collected and, therefore, the applicant deserves to be released on bail. Hence, following order, -

ORDER

- i. The Bail Application stands allowed.
- ii. The applicant be released on

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bail in connection with CR No.1066/2020, registered at Karjat Police Station, District Ahmednagar, for the offences punishable under Sections 307, 143, 147, 148, 149, 323, 504, 506 r/w 34 of IPC and under Section 4, 25 of Arms Act, on PR bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

vi. The applicant shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV