

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.400 OF 2021

PAVAN SUBHASH BHOI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. Joydeep Chatterji, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

Mr. P.B. Rakhunde, Advocate assist to APP

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th APRIL, 2021.

ORDER :

1 Present applicants have been arrested by Muktai Nagar Police Station, Dist. Jalgaon in connection with Crime No.63/2021, for the offence punishable under Section 326, 324, 141, 143, 147, 149, 188 of the Indian Penal Code 1860 and under Section 37(1)(3), 135 of the Maharashtra Police Act, 1951. Initially it was under Section 324 of the Indian Penal Code and other Sections, however, later on Section 326 of the Indian Penal Code has been added. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. Joydeep Chatterji for applicants and learned APP Mr. N.T. Bhagat, well assisted by learned Advocate Mr. P.B. Rakhunde, for the respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report lodged by one Prafulla Prabhakar Varade would show that the incident had taken place on 23.02.2021. He says that at about 8.00 a.m. there was dispute between his driver Mayur Koli (driver on tractor) and one Sachin Dhobi. Learned Advocate for the applicants submits that accused No.3 has been referred as "Sachin Dhobi". Said Mayur Koli had informed the said fact to informant on phone. But then he says that he went to the spot and settled the dispute. Informant then went to shop by name 'Samarth Kripa' and found that accused No.3 was along with 3-4 boys, who were further with some 15-20 boys. According to the informant, those persons had come at about 10.30 p.m. to his house. Informant went to the building and when he was on the first floor, the accused persons picked up quarrel with him and pushed him from the first floor. When informant fell down from the first floor, bricks were pelted on his person. He has stated that present applicant, his younger brother and one Anil Bhoi are the persons, who had pushed him and assaulted him by bricks. At the outset, after taking note of the contents of the FIR it is surprising that police have not invoked Section 452 of the Indian

Penal Code and it is not clear as to whose building it was, where the informant had gone. He has used the word 'building' and not 'house'. However, if we consider the spot panchnama, it gives a different picture and it appears to be not the house of the informant. It is the upper part of shop Shri Samarth Automobiles. If we consider the statement of Dipak Salunke, who has also shown the spot to the panchas and the police, he has not specifically stated that he had seen the present applicant pushing informant from the first floor. He had stated that he had seen gathering of 10-15 boys and they were searching informant by giving abuses, thereafter, those people went to adjacent hotel and then to the open space on the upper floor. He had then heard the noise of informant falling down. Those persons also came down and they had pelted the bricks. The provisional certificate was initially taken and then there is a final certificate. In provisional certificate in all four injuries have been shown, including one fracture, which is stated to be grievous injury. The fracture is to the right tibia/fibula and that is the only injury mentioned in the final certificate. Important point to be noted is that the other three injuries are abrasion and contusion only. At one place he is stating that he was assaulted by only three persons and though the other persons, who were about 10-15 in number are stated to be there, he is not assigning specific role to them. But the witness is assigning role to the other persons. If more than 10-12 persons had pelted bricks, then the injuries,

those could have been caused to the informant, would have been more.

4 With this kind of evidence, the applicants need not be kept behind bars. The investigation appears to be almost over. Further physical custody of the applicants is not required, therefore, they deserve to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Pavan Subhash Bhoi, 2) Amol Subhash Bhoi and 3) Sachin Kishor Nimbalkar, who have been arrested in connection with Crime No.63/2021 registered with Muktai Nagar Police Station, Dist. Jalgaon, for the offence punishable under Section 326, 324, 141, 143, 147, 149, 188 of the Indian Penal Code 1860 and under Section 37(1)(3), 135 of the Maharashtra Police Act, 1951, be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 They shall attend the Muktai Nagar Police Station, once in a week i.e. on every Sunday, 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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