

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.408 OF 2021

Changdev Punja Dange,
Age 51 years, Occupation Agri.,
R/o Dhorale Tal. Rahata,
Dist. Ahmednagar.

**...Applicant
(Orig.Accused No.3)**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Shirdi Police Station,
Dist. Ahmednagar.

...Respondent

.....
Advocate for Applicant : Mr. N. V. Gaware
APP for Respondent-State : Mr. S. B. Narwade
.....

**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 04-05-2021.**

ORDER :

1. Present applicant came to be arrested on 28-11-2020, in connection with Crime No.756 of 2020, registered with Shirdi Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 452, 323, 504, 506 read with 34 of the Indian Penal Code. It appears that later on Section 302 of Indian Penal Code has been added. Present application is filed under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. V. Gaware for the applicant and learned Additional Public Prosecutor Mr. S. B. Narwade for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that applicant has been posed as accused No.3 in the charge-sheet. Now the investigation is over and charge-sheet is filed, therefore the further physical custody of the applicant is not required. Perusal of the First information Report would show that the informant had stated that present applicant had assaulted him with some weapon on the stomach on the right side, but when he was about to give second blow on chest, informant raised his right hand, and therefore, he has received injury to his right hand. Yogesh Sopan Davange is the person who received injuries and later on succumbed to it. It is stated that he was assaulted by co-accused Shankar Dange i.e. son of the present applicant, therefore offence under Section 302 of Indian Penal Code is not attributed to the present applicant. Further, if we consider statements of two eye-witnesses namely Santosh Sanjay Khaladkar and Ganesh Babasaheb Rahane, they both have stated that Shankar Dange was the person who gave blow with some weapon on the stomach of the informant. These

two eye-witnesses have not attributed any role to the present applicant, his presence is only stated by them. Further if we consider the contents of the First Information Report itself, it can be seen that the informant, Yogesh Davange and Santosh Khaladkar went to the house of applicant around 09.00 to 09.15 p.m. There was previous dispute between them and co-accused Shankar on the point of financial transaction. After they reached to the present applicant's house, present applicant had told that he has just now returned from Ahmednagar and came to know that Shankar had abused the informant and others and, therefore, he had assaulted Shankar, and then after watching the incident, Shankar's mother i.e. present applicant's wife wanted to commit suicide, and after hearing that Yogesh Dabange persuaded her and made her comfortable. Thereafter, present applicant and his another son Amol Dange went inside the house and brought Shankar outside. If the present applicant had intention to kill anybody then these facts would not have taken place. But then the informant has twisted the story by saying that when Shankar and present applicant came out of the house they were concealing something in their hand, and after coming near to them, they started abusing and Shankar started assaulting. It can be seen that the incident has been exaggerated

by the informant. As regards the present applicant is concerned, nothing has been recovered at his instance, only his clothes have been seized, it cannot be said to be incriminating at this stage unless it is connected to the Chemical Analysis report. When the investigation is over and further physical custody of the applicant is not required, applicant being aged 51, needs to be released on bail.

4. Per contra, the learned Additional Public Prosecutor strongly oppose the application and submitted that a specific role has been attributed to the present applicant by the informant and informant can be said to be the right person to describe as to who had assaulted him. The eye-witnesses would say what they had seen but in respect of weightage to be given it would be the First Information Report or statement of the informant. Even if we say that as per the First Information Report and statements of eye-witnesses offence under Section 302 may not be attracted to the present applicant, yet he has also caused injuries to the informant which were grievous in nature. The injury that was suffered by him is, CLW over right lateral abdominal region. He was admitted in the hospital for a considerable time and, therefore, definitely Section 307 of Indian Penal Code would be attracted against the present

applicant. His clothes have been seized at the time of his arrest. One chopper like weapon was used and discovered by co-accused Shankar. Offence is serious and, therefore, the applicant does not deserve any sympathy.

5. At the outset, from the First Information Report it can be seen that a role was attributed to the present applicant when it is stated that he had assaulted the informant on the right side of his stomach, and then it was tried to be contended that, he wanted to give a blow on the chest of the informant but that blow was resisted by the informant by his right hand. If we consider the injury certificate issued by Shri Saibaba Hospital on 28-11-2020, there is only one injury that is mentioned which is as aforesaid. The time of examination of the informant was 02.54 a.m. on the same day. The history that was given was the fight between informant and Shankar Dange at 09.00 p.m. He has not stated the name of the present applicant. The two eye-witnesses Santosh Khaladkar and Ganesh Babasaheb Rahane have stated that informant was assaulted by co-accused Shankar. It is to be noted that name of Ganesh Rahane was not disclosed by the informant in his First Information Report. Informant tries to connect one Shiva Rahane with the incident but

then he says that though he promise that he would come, he did not come to the spot. However, Santosh Khaladkar says that one Amol Pachore and Ganesh Rahane went along with Yogesh on his two wheeler and then he himself i.e. Santosh and informant went by the four wheeler of the informant to the house of present applicant. Presence of Amol Pachore is disclosed by Ganesh Rahane also, but it is not disclosed by the informant in the First Information Report. It is to be noted that there is no supplementary statement of the informant, under such circumstance no doubt the informant has received the injury but there appears to be apparent variance as to who has caused it. The discovery is at the instance of Shankar. Offence under Section 302 of Indian Penal Code appears to be attributed to the act done by co-accused Shankar with deceased Yogesh, therefore the present applicant deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Changdev Punja Dange, arrested in connection with Crime No.756 of 2020, registered with Shirdi Police Station Dist.Ahmednagar, for the offence punishable under Section 307, 452, 323, 504, 506 rea

with 34 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five 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) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-