

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 BAIL APPLICATION NO.910 OF 2021
WITH
CRIMINAL APPLICATION NO.2835 OF 2021

AVINASH NILESH KARDILE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. N.V. Gaware, Advocate for the applicant

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

Mr. D.R. Jayabhar, Advocate to assist APP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th NOVEMBER, 2021

ORDER :

1 Criminal Application No.2835 of 2021 moved to assist APP is allowed and disposed of.

2 Present application is the second bail application under Section 439 of the Code of Criminal Procedure, 1973 by the applicant. Applicant is accused No.5 in Crime No.50/2021 registered with Parner Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 326, 324,

143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code, 1860, under Section 3/25, 4/25 of the Arms Act, 1959 and under Section 37(1), 37(3), 135 of the Maharashtra Police Act, 1951. His earlier bail application No.317/2021 was withdrawn by the applicant on 06.04.2021. Thereafter, he has filed once again bail application before the Sessions Court, which has been rejected on 04.06.2021. Hence, this application.

3 Perusal of the FIR lodged by said Jaywant Narwade would show that he was admitted in Vedant Hospital, Shirur in Intensive Care Unit when he lodged the report. It is stated that Grampanchayat elections took place in his village on 15.01.2021. He was contesting the said elections against one Anil Dashrath Kardile, who is accused No.1. It is stated that accused Nos.2, 3, 7 and 8 had asked him not to contest the elections. Jaywant's son Kisan was, in fact, Deputy Sarpanch of village Kurund, but the informant had not paid attention to the threat. After the elections, the voting was done on 18.01.2021 and Anil Kardile was declared as elected and Jaywant lost the election. He was at home around 3.00 p.m. on 19.01.2021 and thereafter, in order to give pesticides to the onion crop, he took two gunny bags of pesticides and started preparation for sprinkling it. Around 3.30 p.m., he found one white colour car and two motorcycles came from Kurund village. Accused Anil Kardile, Sagar Kardile, Pankaj Kardile, Rajendra Shelke, Suhas

Thorat had come by car, whereas Amol Kardile, Vivek Kardile, Akash Kardile, present applicant and one Rajendra Sahebrao Kardile come on motorcycle. He states that accused Amol and Vivek were holding sword, whereas the others including the applicant were holding sticks. Anil abused him and asked as to how he could contest the election against him. When informant said that he should not abuse him, still all the persons started abusing him. Anil then instigated others to assault informant. Amol and Vivek assaulted him by sword on the left hand, head and right hand of the informant respectively and it is stated that others had assaulted him by sticks. When informant's daughter-in-law and Kisan's two sons were coming towards informant, present applicant took out pistol and pointed it to the daughter-in-law of the informant. As the informant was feeling giddiness, accused Anil told that as he would die, they should go. Thereafter, Sagar Kardile had pressed his leg on the neck of the informant and all of them went. The informant then admitted to the hospital by his brothers.

4 It has been now submitted that the charge sheet has been filed on 19.01.2021 and the applicant is in jail for considerable time. His application was withdrawn earlier as the report of the Forensic Laboratory was awaited, however, it is not yet filed. The case of the prosecution itself would show that what has been recovered from another accused under

Section 27 of the Indian Evidence Act is air pistol and no recovery has been shown from this accused. As the sufficient time has been granted, yet, the report is not filed, the applicant deserves to be released on bail. All the co-accused have been released on bail.

5 Per contra, the learned APP well assisted by learned Advocate Mr. D.R. Jayabhar for informant strongly objected the application and submitted that the applicant is the main accused against whom offence under Section 307 of the Indian Penal Code would attract as he had shown the pistol to Nirmala, who is the daughter-in-law of the informant. The report is still awaited and, therefore, it cannot be ruled out that the weapon would turn out to be a deadly weapon, possibility of commission of similar offence by the applicant cannot be ruled out. His role is different from co-accused.

6 At the outset, it is to be noted that contents of the First Information Report would show that different role has been assigned to each accused. As regards the present applicant is concerned, it is stated that he took out a pistol which was concealed in his waist and he pointed out it towards Nirmala – daughter-in-law of the informant. The statements of the witnesses including Nirmala would show the same thing. In the ordinary parlance it could be said that showing pistol would attract the ingredients of

Section 307 of the Indian Penal Code, provided that the pistol is real and is a deadly weapon, which can cause death of a person. A pistol has been recovered in this case from accused No.4 Vivek @ Pitya Arun Kardile and the panchnama states that it is air pistol. Even when it is sent to Forensic Laboratory on 04.04.2021, it is stated that air pistol has been sent. The contents do not show that it had bullets and the bullets have also been fired. In fact, the questionnaire that was sent includes question, as to whether there was firing from the said air pistol and whether it will cause death of a person. Interesting point to be noted is that till today the report is not received. Even opportunity was given to learned APP to contact the laboratory and get instructions as to when the report would be submitted, but he submits that it has not yet been tested. Therefore, as on today the thing is that whatever has been recovered is air pistol. For such delay of the report the applicant need not be asked to remain in jail. Hence, the case is made out for releasing the applicant on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Avinash Nilesh Kardile, who has been arrested in connection with Crime No.50/2021 registered with Parner Police Station,

Dist. Ahmednagar, for the offence punishable under Section 307, 326, 324, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code, 1860, under Section 3, 4/25 of the Arms Act, 1959 and under Section 37(1), 37(3), 135 of the Maharashtra Police Act, 1951, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount.

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 Bail before Trial Court.

6 Criminal Application No.2835 of 2021 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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