

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1104 OF 2020

Nilesh s/o Ashok Shinde,
Age 34 years, Occupation Pvt. Service,
R/o Saraswati Colony Devkar Vasti,
Ward No.7 Shrirampur,
District Ahmednagar.

...Applicant

VERSUS

The State of Maharashtra.

...Respondent

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Advocate for Applicant : Mr. S.G.Ladda & S.S.Ladda
APP for Respondent-State : Mr. A. M. Phule

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WITH

BAIL APPLICATION NO.1043 OF 2020

Wasim Mehmuud Khan,
Age 35 years, Occupation Service,
R/o Fakirwada, Husain Nagar,
Ward No.1, Shrirampur Tq.Shrirampur
District Ahmednagar.

...Applicant

VERSUS

The State of Maharashtra.

...Respondent

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Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent : Mr. A. M. Phule

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WITH
CRIMINAL APPLICATION NO.1849 OF 2020
IN B.A./1043/2020

Arif Ibrahim Mirza,
Age 34 years, Occupation Business,
R/o Hussainnagar, Fakirwada,
Ward No.1, Shrirampur Tq.Shrirampur
District Ahmednagar

...Applicant

VERSUS

1) The State of Maharashtra
Through Police Officer,
Shrirampur City Police Station
Tq. Shrirampur Dist.Ahmednagar.

2) Wasim Mehmud Khan,
Age 35 years, Occupation Service,
R/o Fakirwada, Hussain Nagar,
Ward No.1, Shrirampur
Tq. Shrirampur Dist.Ahmednagar

...Respondents

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Advocate for Applicant : Mr. R. S. Gangakhedkar h/f
Mr. S. S. Gangakhedkar
APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondent No.2 : Mr. Joydeep Chatterji.

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CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
15-01-2021**

**DATE OF PRONOUNCING THE ORDER:
10-02-2021**

ORDER :

1. Criminal Application No.1849 of 2020 has been filed by the original informant to assist learned Additional Public Prosecutor in Bail Application No.1043 of 2020.
2. Permission granted.
3. Application is allowed and disposed of accordingly.
4. Both the bail applications have been filed by the applicants who have been arrested in connection with Crime No.73 of 2018, registered with Shrirampur City Police Station District Ahmednagar, for the offences punishable under Section 302, 307, 387, 452, 143, 147, 148, 149, 427, 120-B, 201, 212, 225 of the Indian Penal Code, under Section 4/25 of Arms Act, and Section 37(1) (3), read with 135 of Bombay Police Act. Applicant in Bail Application No.1043 of 2020 came to be arrested on 22-03-2018 whereas the applicant in Bail application No.1104 of 2020 came to be arrested on 20-07-2020. They both have filed present applications for bail under Section 439 of Code of Criminal Procedure.
5. Heard learned Advocate Mr. S. G. Ladda and Mr. S. S. Ladda,

learned Advocate Mr. R. S. Gangakhedkar holding for Advocate Mr. S. S. Gangakhedkar for applicants, learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

6. It has been vehemently submitted on behalf of both the applicants that the investigation is complete and charge-sheet is already filed, therefore, the physical custody of the applicants is not required for the purpose of investigation.

7. The learned Advocate for applicant in Bail Application No.1104 of 2020 submits that the applicant has been falsely implicated. There was no motive for the applicant to get himself involved in such offence. He was in fact not even present at the spot of incident. No overt act is attributed to him. He is not the author of the injury sustained to the deceased. In fact, in the statement of witness who is a plumber working in the house of informant, who had also witnessed the incident had stated that, only four persons had assaulted the deceased and he has not taken the name of the present applicant. Though the informant has alleged that he was assaulted by means of swords and knife, yet the post mortem report shows that the deceased was assaulted with hard and blunt object. Co-accused No.4 to 6, 8, 9 and 11 have been released by this Court

and co-accused No.7 has been released by the Additional Sessions Judge, Shrirampur, therefore, on the ground of parity also, he deserves to be released on bail.

8. Learned Advocate for applicant in Bail Application No.1043 of 2020 vehemently submitted that the applicant has been named as accused No.1. The Sessions Case No.42 of 2019 has not yet commenced. He has a constitutional right to get his case decided, however the charge is also not even framed in the matter. At the time of withdrawing of his earlier bail application, this Court had granted liberty to approach this Court again if the trial does not commence within the period. In fact, he has not done any such act which will protract the trial. Six co-accused have been granted bail, and therefore, on the ground of parity, he deserves to be released on bail.

9. Learned Additional Public Prosecutor strongly opposed the applications and submitted that the charge-sheet was filed on 02-03-2018 itself when applicant Nilesh was absconding. He was absconding for about two years after the commission of the offence. Further accused No.3 to 6 and 7 were also absconding, therefore charge-sheet came to be filed in their absence. When these persons

have gone absconding, it cannot amount to protracting of trial by the prosecution. First Information Report has been lodged by one Arif Ibrahim Mirza stating that accused No.1 and 2 had gone to the house of maternal aunt of the informant at about 01.30 p.m on 02-03-2018. They started disputing as to how they have purchased a place which they intended to purchase. They insisted that the informant should sell out the said land to them. Threats were given that if sale deed is not executed then the informant would be eliminated. Thereafter, on the same day at about 5 p.m. when the informant was in his house with his family members, at that time in all ten accused persons barged into the house. They had come together on three motorcycles and one car. Accused No.1 and 3 were holding swords, accused No.4 was holding knife, accused No.6 was holding wooden log and iron rod. Since the informant had lodged a report with the police regarding the incident that had taken place at about 01.30 p.m., they started asking him as to how he could give the complaint. Accused No.2 and 3 had started assaulting the two brothers of the informant with sword. Accused No.2 had assaulted on the head and chest of Sajid by sword, as a result of which he sustained bleeding injury to his head. Accused No.1 assaulted informant's brother Samir on his head and left hand

with word, as a result of which his little finger got cut. Accused No.4 had given blow on the right thigh of Samir, accused No.5, 6, 8, 9 and 10 had assaulted brothers i.e. Sajid and Samir with iron rod and wooden log. Thus, overt act is attributed to each and every person by the informant. The severity can be seen that Samir who had sustained injury to his head due to sword, injury to left thigh by knife, and Sajid expired while undergoing treatment due to the head injury. There are eye-witnesses to the incident and the statements of the witnesses taken under Section 164 of Code of Criminal procedure would also revealed specific act in respect of the accused No.1 and 2. Even though this Court had given liberty to accused No.1 to file application for bail if the trial does not commence, yet that cannot be beyond the merits, the merits will have to be considered. The discovery of weapons and the cloths which were on the person of the applicants on the date of the offence would reveal their participation and, therefore, they do not deserve discretionary relief.

10. Since almost the entire First Information Report has been already stated, it is not reproduced again, however it can be definitely said that the role has been attributed to both the accused.

As regards applicant Nilesh is concerned, his application deserves to be rejected at the threshold for the simple reason that he was absconding for two years after the offence and, therefore, the possibility of he getting absconding in future cannot be ruled out. On merits on the face of the record also it is to be noted that in the First Information Report it is stated that he had assaulted Sajid who later on succumbed to the injuries with rod and wooden log. In his statement under Section 164 of Code of Criminal Procedure also, the informant has reiterated the same fact. Statement of witness Farzana Javed Mirza, who is the sister-in-law of the informant and was present in the house would show that the present applicants were holding sword and iron rod respectively. In her statement under Section 164 of Code of Criminal procedure she has maintained the same fact. Same is the case with witnesses Kadir Ibrahim Mirza, Riyaz Shaukat Mirza and Asif Ibrahim Mirza. Learned Advocate representing applicant Nilesh points out the statement of witness Raju Chandrakant Gangawane who was the plumber and was present in the house of the informant. He has stated that Sajid was assaulted by Wasim Khan, Abdula Shaikh, Juber Shaikh and Firoz Khan. In his supplementary statement he has stated that since he was knowing these four persons, he has given their names,

but then he says that, even applicant Nilesh was also present. However, his statement under Section 164 of Code of Criminal procedure would show that after he had heard the noise, he went to the spot, he saw four persons were assaulting Sajid Mirza. When Samir had come to rescue Sajid, he was also assaulted and after they raised voice, those persons fled away. He says that the persons who assaulted the injured were Wasim Khan, Abdulla Shaikh, Juber Shaikh and Firoz Khan. He is definitely saying about the presence of accused No.1 but not of the applicant Nilesh. This only fact cannot give a right to said accused to get bail. Statement of injured Samir would show that he was assaulted by Firoz. Firoz had assaulted him with knife which got impact embedded in his right thigh. It is a prosecution story that it was required to be removed through surgery. He also says that he had seen four persons getting down from four wheeler, and he says that, three more unknown persons had come on motorcycle. He also says that accused No.1 had assaulted him on his head by sword. His medical certificate shows that he has received five injuries ;

- (1) Punctured wound on lateral aspect of right thigh and knife in it,
- (2) Laceration over left hand little finger,

- (3) CLW over right frontal neg,
- (4) Blunt trsune over right shoulder and left calf neg,
- (5) Wheal mark, over anterior aspect, left thigh, above knee oval shape.

A fact is also required to be considered from the statement of witness Aayaz Shaukat Mirza that deceased Sajid had performed an inter caste marriage on 19-10-2011 and then she has got converted to Islam. She was serving as an Assistant Professor at Agasti College at Akole, and then he says that on 02-03-2018 after Sajid was murdered, his wife committed suicide by hanging. The impact of the offence is also required to be considered. Further there is evidence of recovery of weapon, clothes at the behest of accused No.1. Under such circumstances, though this Court had granted liberty to accused No.1 to file bail application, yet it cannot be at the cost of merits. The punishment that is provided is imprisonment for life, and therefore, the duration of his custody need not be considered. Only directions can be given to the Trial Court to expedite the matter.

11. Both the applicants have not shown the circumstances in which the discretion can be used by this Court. As regards bail granted to

co-accused is concerned, it is to be noted that the role attributed to each one of the accused is different. Though applicant Nilesh may be considered on equal footing as regards the role attributed to him in the case with co-accused Maulana and Vishal, however since he was absconding for about two years and could be found only after taking steps, the possibility of he getting absconding again keeps him away from getting the discretionary relief. Hence, both the applications stand rejected.

12. The learned Additional Sessions Judge, Shrirampur Dist. Ahmednagar, with whom Sessions Case No.42 of 2019 is pending for trial, to expedite the case and try to dispose it as per procedure of law as early as possible.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-