

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

48 BAIL APPLICATION NO.1106 OF 2021

Balasaheb Shivaji Patil (Biradar)

Age: 44 years, Occu.: Service as Head Master,

R/o. Nagalgaon, Tq.Udgir, Dist.Latur,

Presently Residing at : Udgir,

Tq.Udgir, Dist.Latur.

..Applicant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra

Through Police Inspector,

Police Station Udgir Rural

Tq.Udgir, Dist.Latur.

..Respondent

...
WITH

**CRIMINAL APPLICATION NO.2128 OF 2021
IN BA/1106/2021**

...

Advocate for Applicant : Shri V.D.Gunale

APP for Respondent : Shri S.D.Ghayal

Advocate for Informant : Shri Shivraj B.Kadu

...

CORAM : M.G.SEWLIKAR, J.

DATE: 25th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0321 of 2021, registered with Udgir Rural Police Station, District Latur, under Sections 307, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3, 25(9), 30 of the Indian Arms Act.

2. It is the prosecution's case as detailed in the FIR that on 1st August, 2021 at 10:00 a.m., accused No.1 came to informant's field alongwith a JCB machine alongwith the applicant. Applicant and accused Shivaji Biradar Patil started damaging common bund. Informant objected to it. Thereupon, applicant started abusing informant. Soon thereafter, accused Shivaji took out a Pistol and fired a gun shot at the informant. The gun shot missed the informant. Therefore, accused Shivaji again fired. The bullet hit victim Ramesh on his waist. Thereafter, injured was shifted to the hospital. Accordingly, FIR came to be registered on 1st August, 2021 under the aforesaid Sections.

3. Heard Shri V.D.Gunale, learned counsel for the applicant, Shri S.D.Ghayal, learned APP for the respondent-State and Shri S.B.Kadu, learned counsel for the informant.

4. Shri Gunale, learned counsel for the applicant submits that applicant was not present at the spot. At that time, he was at Ghonsi phata. He further submits that entire act is attributed to accused No-1 Shivaji Biradar Patil and not to the applicant. The only allegation against the applicant is that he abused the informant.

5. Shri Ghayal, learned APP for the respondent-State submits that at 04:30 p.m. location report shows that applicant was present at Shastri Nagar. Spot of the incident i.e. Nagalgaon is at a distance of 7 to 10 kms. from Shastri Nagar whereas village Ghonsi is at a distance of 15 kms. from Shastri Nagar. He submits that this clearly shows that applicant was present at the spot of the incident.

6. Shri S.B.Kadu, learned counsel for the informant states that applicant has criminal antecedents.

7. Criminal antecedents will be considered only when involvement of applicant is shown in the offence in question. In case at hand, applicant, as per own showing of the victim, was not present at the spot of the incident.

8. On perusal of the statement under Section 164 of the Code of Criminal Procedure recorded by the learned Judicial Magistrate First Class (Court No.3), Udgir, it shows that only accused Shivaji Biradar Patil was present at the spot of the incident. Statement recorded under Section 164 of the Code of Criminal Procedure does not show presence of applicant at the spot of the incident. In view of this, considering the role of the applicant i.e. only of

abusing, location report that applicant was present at Shastri Nagar and the statement recorded under Section 164 of the Code of Criminal Procedure, I am inclined to release the applicant on bail. Hence, the order.

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.50,000/- (Rs.Fifty thousand only) with one solvent surety in the like amount, in connection with Crime No.0321 of 2021 registered with Udgir Rural Police Station, District Latur under Sections 307, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3, 25(9), 30 of the Indian Arms Act.
- iii) Bail Application is disposed of.
- iv) Criminal Application No.2128 of 2021 filed for assist to Public Prosecutor is disposed of.
- v) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**