

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

BAIL APPLICATION NO.1529 OF 2020

Umakant @ Govind s/o Ramesh Nil = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.Rupeshkumar C.Bora, Advocate for Applicant/s;

Mr.SB Narwade, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 15th January, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.348/2019 by Newasa Police Station, District Ahmednagar for the offences punishable under Sections 307, 323, 504, 506, 354D read with 34 of IPC and under Sections 4/25 of Arms Act and under Section 7 and 8 of POCSO Act. After the investigation charge sheet has been filed before the Special Judge under the POCSO Act and the case is registered as Special Case No. 179/2019, which is now pending before the Special Judge/Additional Sessions Judge, Newasa, District Ahmednagar. The present applicant has prayed for bail under Section 439 of Cr.P.C.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicant that the applicant is 20 years old student, who has been falsely implicated by the informant and witnesses. The contents of the FIR would reveal that there was love affair between the applicant and daughter of the informant. There were telephonic conversations between them. The applicant was desirous of marrying the girl after attaining age of majority. It is stated that he was dreaming of a happy married life with the girl after completion of his education and securing a job. It appears that the parents of the girl are not approving their relationship and, therefore, he has been falsely implicated. No such incidence, as narrated in the FIR, had ever taken place. In fact, the informant, along with his 12-15 relatives, armed with sticks, axe and sickle, had unlawfully entered in the house of the applicant; raised quarrel; uttered abusive words and attempted to assault the applicant, his brother and father. Brother of the applicant had sustained simple head injury by means of axe. Now, charge sheet is filed

and the investigation is over. Under such circumstance, by imposing conditions, the applicant may be released on bail. He is ready not to even enter Newasa taluka except for attending the court work.

4. Per contra, learned APP strongly opposed the application and submitted that the FIR, in clear terms, states that the present applicant had tried to express love for minor daughter of the informant, when in fact, the daughter had no such feeling for the applicant. He used to instigate her to run away with him. Even when the daughter had gone for Darshana in a temple, even at that place also, by restraining her from proceeding further, he had tried to say the same things. But, taking into consideration future of the daughter, no report was lodged. On 26.5.2019, again the daughters of the informant were restrained by the applicant from proceeding further and he was insisting that the victim should give him phone call. Threat was given that otherwise he would kill her parents and brothers. When on the next day, at about 7.30 am, the informant was proceeding

to have talks with parents of the applicant, at that time, the applicant and his brother suddenly came towards the informant. Present applicant was holding sickle and his brother was holding axe. They had tried to commit murder of the informant. As the blow was resisted by the informant, it has caused grievous injury to his hand. His brother had given blow of axe on his back and waist. Statements of eye-witnesses support the contents of the FIR. Further, there is recovery of the sickle from the present applicant which was used in the commission of the crime. The injury certificate would show that the injuries sustained by the applicant were grievous in nature. The Discharge summary issued by the Government Medical Collect, Aurangabad, where the informant was shifted, shows the diagnosis as "Assault with traumatic amputation of left thumb" and there was also injury to the head. He was asked to come up for follow up. All these facts dis-entitle the applicant from releasing on bail as there is sufficient evidence against him.

5. At the outset, it is to be noted that this is the 4th bail application under Section 439

of Cr.P.C. by the present applicant. His earlier bail application bearing Bail Application No.936/2019 was dismissed as withdrawn by this Court on 22.8.2019. The second bail application No. 1448/2019 was disposed of as withdrawn on 12.2.2020 and 3rd bail application being Bail Application No.659/2020 was disposed of as withdrawn on 15.9.2020. Under this circumstance, it was required for the learned Advocate for the applicant to show as to what are the changed circumstances. If we consider the copy of the charge sheet, which is produced on record, then it can be seen that the charge sheet has been produced before the learned Special Judge on 26.8.2019. That means the applicant's bail application No.1448/2019 and Bail Application No.659/2020, were moved after filing of the charge sheet and now there is absolutely no change in the situation. Therefore, on this count itself the bail application deserves to be rejected. Even if for the sake of arguments, it is accepted that the applicant can file as many applications as he can and they will have to be considered; yet it is to be noted that there appears to be prima facie evidence against the

applicant. It is clearly contended in the FIR as well as in the statement of the victim, who is aged about 14-15 years of age, and to be precise the birth certificate depicts her date of birth as 12.7.2005, and there was no such love affair between the applicant and the victim. Even in her statement, she states that whenever she used to be alone, at that time, the applicant used to say that he loves her and then used to instigate her by saying that they should run away. The applicant is merely a student and instead of pursuing his studies, it appears that he was indulging in such activity. The FIR as well as the statements of the victim and the relatives would show as to how the applicant used to harass her. Further as regards the date of the incident is concerned, the witnesses clearly say that the present applicant had given a blow of sickle with intention to kill the informant. However, that blow was resisted by the informant, which has resulted in literally amputation of his thumb, which indicates the force with which he had given the blow of sickle. The recovery of the sickle is under Section 27 of the Indian Evidence Act from the applicant. The injury

certificate shows two injuries, viz. Crush injury to left hand and further it is stated as crush injury on left scapular region. Both the injuries are grievous in nature. Further, it appears that the applicant was shifted to the Government Medical College, Aurangabad and, as aforesaid, it is mentioned that there is assault with traumatic amputation of left thumb.

6. Taking into consideration the statements of the witnesses and the circumstances in which the offence is stated to have been committed, though the applicant seems to be 20 years old person; yet no case is made out to release him on bail. Hence, the Bail Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV