

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

BAIL APPLICATION NO.1533 OF 2020

1. Wasim Hakim Pathan
2. Samadhan Gorkh Patil (Salunke)
3. Pupraj Yuvraj Shendane ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. A.D. Khot h/f Mr. P.D. Bachate, Advocate for the applicant.
Mr. A.M. Phule, APP for the respondent-State.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 14th JANUARY, 2021**

ORDER:-

1. All the applicants have been arrested in connection with Crime No.362 of 2020 registered with Beed Rural Police Station, District Beed, for the offences punishable under Sections 147, 148, 149, 307, 326, 325, 427 of the Indian Penal Code and therefore, they have filed the present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A.D. Khot holding for learned Advocate Mr. P.D. Bachate for the applicant and the learned APP Mr. A.M. Phule for the respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the informant has falsely implicated the present applicants in fact, there appears to be a business rivalry. First informant wanted to sell his cotton to applicant no.1, but

applicant no.1 did not preferred to purchase from him. Perusal of the FIR would show that it is alleged that the present applicants had assaulted the informant with iron rod, pipes and sticks. Now, substantial part of the investigation is over. The exaggeration can be seen that it is alleged that the present applicants had snatched apple company mobile, gold chain weighing 33 grams and amount of Rs. 5,000/- from one Vishal Gaikwad. The First Information Report is totally silent on this point. All the alleged weapons have been seized from the spot. Nothing is to be seized from the present applicants now. The injury certificates at the most show fractures, however, it is not to the vital part and therefore, Section 307 of the Indian Penal Code is not attracted. The learned Advocate, therefore, canvassed for releasing the applicants on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the informant is an agriculturist. He wanted to sell his cotton grown in his farm and therefore, had brought it near godown at Village Belura. At about 07.00 to 07.30 pm, it was found by the cotton growers that applicant no.1 was cheating at the time of weighing the cotton and therefore, it was agitated that he should weigh it properly and pay for the difference in the weight. Thereafter, when the informant called Vishal Gaikwad with the parcel for lunch, at that time, applicant no.1 was talking with some persons on phone. Thereafter, all of them went on motorcycle. At about

09.30 to 10.00 pm, one pick up van came and about 6 to 7 persons got down from the said van with iron rod, pipes and sticks. Applicant no.1 was along with them and he asked those other persons to assault the informant, one Anil Gawate and Vishal Gaikwad. The present applicants had assaulted the informant with iron rod and other weapons as a result of which, he has sustained fractures. Vishal Gaikwad also received injuries. When statement of Vishal Gaikwad was recorded, it was revealed that his mobile handset of apple company, gold chain weighing 33 grams and amount of Rs.5,000/- was taken away. The said articles are yet to be recovered. Possibility of tampering cannot be ruled out and therefore, they do not deserve to be released on regular bail.

5. At the outset, it is to be noted that the incident appears to have been taken place in respect of dispute that occurred when the informant and some other persons felt that applicant no.1 has not weighed the cotton properly. When the demand that the cotton has been weighed less was made, it appears to be the incident that had taken place in the evening and thereafter, all had disbursed, but then informant says that the incident of assault took place between 09.30 to 10.00 pm. According to the informant, present applicants had assaulted him by iron rod, pipes and sticks. All those weapons are stated to be seized from the spot. The spot panchanama shows seizure of 7 weapons. The statement of witnesses have been

recorded. The medical certificate issued by Renu Hospital, Beed would disclose that the informant has received fracture injury to mid-shaft tibia fibula right side and fracture dorsal. He has been discharged on 10.11.2020. Further the medical certificate of Vishal Gaikwad shows comminuted fracture of mid-shaft, 3rd, 4th and 5th rib left side. Further, there is a medical certificate of the informant issued by Sancheti Hospital which shows (1) closed femur medial condyle fracture (2) closed right side tibial shaft fracture (3) closed right side 1st metatarsal shaft undisplaced fracture, which are stated to be grievous injuries. Therefore, even if taking into consideration these injuries, yet, it can be prima facie considered that none of them could have been dangerous to the life and therefore, definitely there is a question, as to whether provision under Section 307 of the Indian Penal Code would be attracted or not. Substantial part of the investigation is over. Under such circumstance, further physical custody of the applicants is not required and their application deserves to be allowed. Hence, the following order is passed:

ORDER

- I) The application stands allowed.
- II) Applicant nos. 1 to 3 viz. Wasim Hakim Pathan, Samadhan Gorkh Patil (Salunke), Pupraj Yuvraj Shendane arrested in connection with Crime No.362 of 2020 registered with Beed Rural Police Station, District Beed, for the offences

punishable under Sections 147, 148, 149, 307, 326, 325, 427 of the Indian Penal Code, be released on P.R. of Rs. 30,000/- (thirty thousand) each with two solvent sureties of Rs.15,000/- (fifteen thousand) each.

III) Applicants shall remain present before the Investigating Officer on every Monday and Thursday between 10.00 am to 12.00 pm till filing of the charge sheet.

IV) Applicants shall not tamper with the evidence of the prosecution in any manner.

V) Applicants shall not indulge in any criminal activity.

VI) Applicants to comply the requirements under Para 12 (1) to (6) of Chapter-I of Criminal Manual before the trial Court (whichever are applicable).

VII) Bail before the trial Court.

(SMT. VIBHA KANKANWADI, J.)