

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO.132 OF 2022

TANAJI RAMA CHITTALWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.P. Shinde, Advocate for the applicant

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

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th APRIL, 2022

PER COURT :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant came to be arrested on 06.09.2021 in connection with Crime No.201/2021 dated 05.09.2021 registered with Himayatnagar Police Station, Dist. Nanded, for the offence punishable under Section 307, 506, 109 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. G.P. Shinde for the applicant and learned APP Mr. A.M. Phule for the respondent.

3 It has been vehemently submitted on behalf of the applicant that since September, 2021 the applicant is in custody. Co-accused have been released on bail. The investigation is complete and charge sheet was also filed on 02.12.2021. Though there are eye witnesses to the alleged incident, by putting conditions the applicant can be released on bail. He may not reside in the same village.

4 The learned APP strongly opposes the application and submits that the evidence that has been collected is very strong. He is the person who had inflicted injuries by means of katti on the injured. Apart from the injured, there are eye witnesses to the incident and the said incident had occurred in the house of one Vinod Chavan. The statement of Vinod Chavan also reflects that when they were playing cards, the applicant came and he had assaulted the injured on his head, neck and at other places. The situs chosen is vital part and if he would not have been treated he would have succumbed to the injuries and, therefore, ingredients of offence have made out. When there is evidence against the applicant he does not deserve to be released on bail.

5 The investigation is complete and the charge sheet is filed, therefore, definitely, it can be inferred that the custody of the applicant is not

required for the purpose of investigation. The criterion required to be adopted for considering the application under Section 439 of the Code of Criminal Procedure would be to see what evidence has been collected in the matter. Perusal of the First Information Report show that it has been lodged by the wife of injured. Lata Balaji Jadhav states that when her husband had gone to house of Vinod Chavan and they were all sitting in the courtyard, at that time, the present applicant and his two sons went at the said place. The sons instructed applicant and then the applicant had assaulted her husband Balaji Marotrao Jadhav. The incident had taken place at 1.30 p.m. on 05.09.2021. Admittedly, she was not present at the spot, but she says that she was informed about the said fact by her son Ganesh. She went to the said place immediately thereafter, and saw that the husband was unconscious and blood was oozing out of his injuries to the stomach and head. The husband was then shifted to hospital in Himayatnagar, however, taking into consideration the injuries he was required to shift to Yashashri Hospital, Nanded and thereafter she has lodged the report.

6 The Medico Legal Certificate of the injured shows that the injured had sustained six injuries. First injury is stab injury on right lateral aspect of abdomen. It was grievous and would have been possible by sharp and long object. Second injury is laceration to right forearm upper half flexer

aspect. It was also possible by sharp and long object and the nature is grievous. Third injury is laceration on scalp. It was multiple on occipital region. The type of the weapon used is stated to be sharp object and the nature of the injury is stated to be grievous. Injury Nos.4, 5 and 6 are intestinal injuries, which have been stated to have been caused by sharp and long object and those were also grievous in nature. Statements of witnesses have been recorded. Witness Vinod Chavan is the eye witness, who had seen the present applicant giving blows of iron katti on the head, neck and stomach of the injured. He has also heard applicant saying to the injured that he had intention to kill him and then he had plan to commit suicide. However, now, as he is survived, he left the place. Another witness Ramdas Chittalwad was also present there, who is also saying the same thing. They both are saying that Ramdas and Vinod had caught hold of the applicant and Vinod snatched the katti from the hands of the applicant. The said katti has been produced by Vinod before the police. Though the incident is stated to have taken place on 05.09.2021, there are certificates on record given by the Doctor stating that the injured was not in a position to give statement. Ultimately it appears that he was fit to give statement on 15.09.2021 and therefore, his statement has been recorded. He has also stated that the applicant had assaulted him with iron katti on his head, neck and stomach. Witness Ramesh Jogdand and Avdhut Gadekar are also the persons, who

were playing cards in front of house of Vinod Chavan when the incident had taken place. They are also the eye witnesses and they have stated in the same way as the other eye witnesses have stated. Statements of certain witnesses have also been recorded under Section 164 of the Code of Criminal Procedure and they are also on the same line.

7 When such evidence is against the applicant, this cannot be the case where he should be released on even regular bail. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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