

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 BAIL APPLICATION NO.355 OF 2022

BHARAT TULSHIRAM KHEDEKAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Salunke Parth Surendra
APP for Respondent-State : Mr. V. S. Badakh
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-04-2022

ORDER :

1. The applicant is seeking bail under Section 439 of Cr.P.C. He has been arrested in connection with Crime No.288 of 2021, registered with Karmad Police Station, District Aurangabad, for the offence punishable under Section 307, 326, 323, 504, 506 of Indian Penal Code.
2. Heard learned Advocate Mr. Salunke P. S. for applicant and learned APP Mr. V. S. Badakh for respondent-State.
3. The FIR has been lodged by one Mhasu Gajuba Khadekar on 08-07-2021 at about 17.14 hours in respect of the incident dated 06-07-2021 allegedly took place at 08.30 a.m. He has stated that when he was putting fencing for grapes taken by him in his land bearing Gut

No.49, he was stopped by accused No.1 who is his cousin brother and it was told that he should not place the fencing on common bandh. Informant told that he is putting the fencing to his grape trees grown in his land. Then after the work was done when he was coming to his house by road, then he was stopped by the accused persons including the present applicant who has been shown as accused No.3 who were armed with sticks and axe. It is then stated that he was assaulted by all the three persons on both of his hands by sticks, on palm, right elbow and back. After hearing his voice, his sons Akash and Prakash as well as wife Shakuntala and daughters Baby and Kalyani came. They were also assaulted by the accused persons. His son Akash has received severe injuries.

4. The investigation has been done and the charge-sheet is also filed, and therefore, we are required to consider the evidence that has been gathered. The panchanama of the spot gives two places as spot panchanama. At one place the field of the both the parties i.e. accused as well as informant is shown adjacent, but there is no road as such in between to come to the house of the informant. The said position of the spot given in the spot panchanama also does not support the statements of the witnesses and injured. Except

Prakash all appear to be stating that when they were inside the house which is in the field, they heard the voice of the informant and when they came out of the house, they found the accused were assaulting the informant. Exact place has not been given by them. But it is then also stated that there is a cart road in Gut No.49 where the alleged incident was taking place. If we compare this with the map drawn in the spot panchanama, the Gadi Rasta i.e. cart road is shown at a different place and there is no statement that there was a spot of incident on that road. Witness Prakash has stated that when he was working in the field, he heard the noise and found that his father was being assaulted by the accused persons. He has not further given any specific place where the incident was going on.

5. Another fact to be noted from the statements of witnesses as well as the FIR that all of them have stated that all the three accused persons were assaulting with stick and axe. Further, as regards the applicant is concerned, it is stated that he along with co-accused was assaulting. Which weapon the informant was holding, to whom he had assaulted and which part of the body of the person had received the assault, is rather vague. It can be put differently that a collective act is shown and not specific role. No doubt, the

Medico Legal Certificates show that grievous injuries have been sustained but the fact remains is that co-accused Tulshiram has been released by this Court on 02-02-2022 on regular bail though it was before the charge-sheet. Therefore, when the applicant is similarly situated, on the ground of parity, he deserves to be released on bail on the same conditions. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Bharat s/o Tulshiram Khedekar be released on P.R.Bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.288 of 2021, under Section 307, 326, 324, 323, 504, 506 of the IPC, registered with Karmad Police Station, District Aurangabad, on condition that he shall not tamper the prosecution evidence and shall not enter village Demni Taluka and District Aurangabad, till the conclusion of the trial.
- 3) The above observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.