

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

BAIL APPLICATION NO.364 OF 2022

1. Sham S/o. Datta Shimple
Age: 29 years, Occu.: Labourer,
R/o. Chonde Galli, Kalamb,
Tq.Kalamb, Dist.Osmanabad.
2. Nilesch S/o. Baburao Parde
Age: 23 years, Occu.: Labourer,
R/o. Bhimnagar, Kalamb,
Tq.Kalamb, Dist.Osmanabad. ..Applicants

VERSUS

- . The State of Maharashtra ..Respondent

...
Advocate for Applicants : Mr. Dattatray H. Jadhavar
APP for Respondent : Mr.V.S.Badakh

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 12th April, 2022

ORDER :-

1. Applicants have been arrested in connection with Crime No.0022 of 2022, registered with Kalamb Police Station, District Osmanabad, for the offence punishable under Sections 143, 147, 148, 149, 307, 324, 323, 504, 506 of the Indian Penal Code.
2. Applicants came to be arrested on 19th January 2022. The said offence came to be registered on the basis of the FIR lodged by one Sujit Rajendra Bargule. They have filed present application under Section 439 of the Code of Criminal Procedure.

3. Heard Mr.D.H.Jadhavar, learned Advocate for the applicants and Mr.V.S.Badakh, learned APP for the respondent. In order to cut-short, it can be said that both of them argued in support of their respective contentions.

4. The informant has lodged the said report on 11th January, 2022 in respect of incidence that had allegedly taken place on 10th January, 2022 at about 02:15 a.m. The informant states that at around 01:30 a.m., there was sudden stomach ache for him when he was at his house in Pimpalgaon Dola. He, therefore, made a phone call to his cousin brother Angad Shrimant Bargule and then Angad told him that he should come to Kalamb and they would go to a medical shop to buy medicines. Accordingly, they both went to Ganesh Nagar and then to Chatrapati Shivaji Maharaj Chowk. They could not get the medical shop which was open and they were therefore went at Ambedkar chowk at 02:15 a.m. in search of the medical shop. He then states that present applicants and co-accused were standing there. Applicant No.2 asked Angad as to why he had issued notice for recovery of loan from his Bank and then he started abusing. When the informant was saying that they should not abuse, at that time, all of them gathered and started man-handling as well as assaulting by kicks and fist blows to the informant and Angad. Applicant No.2 and

co-accused Jalil were having wooden sticks. They assaulted Angad with those sticks. Angad fell down and then applicant No.1 by saying that he would kill Angad assaulted him with iron rod which caused injury near the left eye of Angad and then it is said that all the accused persons went away from that place in Auto Rickshaw. Informant brought Angad to the Government Hospital, Kalamb. Stitches were applied to injuries of Angad near eye and then he was referred to the Government Hospital Ambejogai. Then he was referred to Dr.Santosh Topadikar at Latur. It is then stated that he was further referred to Ganpati Netralaya, Jalna for the treatment of his eyes.

5. Thus, it is to be noted that the injuries are stated to be to said Angad mainly and not to the informant which are said to be grievous one. If we consider Medico Legal Certificate of Rural Hospital, Kalamb which has been provided in the Police papers, then it shows three injuries; one was CLW over forehead which is stated to be simple, second is blunt injury to left eye and third is CLW over left eye. They are stated to be caused might be with hard and blunt object, and sharp object respectively. However, final certificate has not been issued. From another injury certificate issued by Ganpati Netralaya, Jalna where Angad was admitted from 10th January 2022 to 12th January 2022,

description of the injury is narrated as “Left Eye Corneoscleral Tear with Lineal Tissue Prolapse with Pericoloredema with Subconjunctival Haemorrhage” and nature of the injury stated to be grievous.

6. Now, the question is whether these injuries could have caused death. Whether ingredients of the offence under Section 307 of the IPC can be said to have been fulfilled is a question. The Police papers do not show that injury certificate from other hospitals was collected which would show that the injury to Angad would have caused his death, if he would not have been treated.

7. It appears that the investigation is complete though charge-sheet is not submitted yet. Statements of witnesses have been recorded. Weapons allegedly used in the commission of the offence had been recovered. Statement of Angad is almost replica of the FIR. The statements of other witnesses who are the relatives of the informant and injured would show that they are depending on what information supplied to them by the informant and Angad.

8. At the said odd hours, except the informant and Angad, no

other person was stated to be present. It is hard to believe that the applicants would have had knowledge that the informant and Angad would come to that place on that day at that time. It cannot be mere coincidence that too at 02:30 a.m. Therefore, taking into consideration all the aspects, the applicants deserve to be released on bail since substantial part of the investigation is over. Therefore, their custodial interrogation is not necessary. Hence, the following order :

ORDER

- i) The Application stands allowed.
- ii) The Applicant No.1 - Sham Datta Shimple and applicant No.2 - Nilesh Baburao Parde be released on bail in connection with Crime No.0022 of 2022, registered with Kalamb Police Station, Dist.Osmanabad, for the offences punishable under Sections 143, 147, 148, 149, 307, 324, 323, 504, 506 of the IPC, on P.R.Bond of Rs.30,000/- (Rs. Thirty Thousand only) each with two solvent sureties of Rs.15,000/- each by each applicants.
- iii) The applicants shall not indulge in any criminal activity and they shall not tamper with the prosecution evidence in any manner

iv) The applicants shall remain present before the Investigating Officer on every Monday between 10:00 a.m. to 02:00 p.m. and cooperate with the Investigating Officer.

(**SMT. VIBHA KANKANWADI**)
JUDGE

SPT