

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

BAIL APPLICATION NO.426 OF 2022

GHUNGROOSINGH JEETSINGH TAK
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr.H.F.Pawar h/f.
Mr.Bhagwan Vithal Shirwadkar
APP for Respondent : Mr.V.S.Badakh

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 27th April, 2022

ORDER :-

1. The applicant has been arrested in connection with Crime No.0241 of 2021 registered with Shivajinagar Police Station, District Nanded on 12th October, 2021. The said crime came to be registered on the basis of the FIR lodged by Sanjay Sambhaji Deokar on 23rd June, 2021 in respect of the incident that has allegedly taken place at about 17:30 hours on 21st June, 2021, for the offence punishable under Sections 307, 143, 147, 148, 149, 324, 323, 504, 506 of the Indian Penal Code (IPC) and under Sections 4, 25 of the Indian Arms Act.

2. Present application has been filed under Section 439 of the Code of Criminal Procedure.

3. Heard Mr.H.F.Pawar, learned Advocate holding for

Mr.B.V.Shirwadkar, learned Advocate for the applicant. He has taken this Court through the contents of the FIR and also the charge-sheet. He has pointed out that in the FIR the informant states that when he was near Renukai Hospital alongwith his father at about 05:00 p.m. on 21st June, 2021, he received a phone call on his mobile given by present applicant, who had then called him near Nagarjun Hotel. He states that he as well as his father went to the spot at about 05:30 p.m. where all the accused were present. He states that suddenly the present applicant assaulted him with sword by saying that because of the informant their pigs are missing and he will not keep quiet till he kills the informant. The blow was resisted by the informant by his hands and because of the same, at the time of first blow, he lost his two fingers of right hand and in the second blow, it was a big cut injury from the last finger till wrist on the left hand. His wrist got fractured. Thereafter, other accused persons also stated to have attacked the informant and his father by picking knife (Khanjar) and swords. It was then resisted and when they raised voice, people started gathering and the assailants fled away. Learned Advocate for the applicant thereafter points out statement of father of the informant in which he had stated that after above mentioned calls were received, informant alone went and when father realized that something is happening he went at

that place so there is contradiction. So also he pointed out the statement of the informant under Section 164 of the Code of Criminal Procedure, which is giving a different story. In his said statement under Section 164 of the Code of Criminal Procedure, he says that his father arrived later. It has been further pointed out that the statements of the witnesses have been recorded belatedly so also FIR itself belatedly lodged and there is no explanation for the delay. No blood was found from the spot and the recovery is from co-accused. The applicant is serving as a Driver with Police Department and he was posted at Degloor in Nanded District at the relevant time, however, he was not having any duty on the date of incident, therefore, he was at Nanded with his family.

4. In respect of the incident which is stated to be a cross complaint, the FIR has been lodged by one Anil Mallikarjun Mathapati. He is saying about presence of present applicant and applicant's wife at the said place and then stated that present applicant had received injuries. In that FIR, the informant and others were assaulted with big knife (Khanjar) and stones. Investigation is complete and charge-sheet is filed and therefore, further physical custody of the applicant is not required. Applicant is in jail for a considerable long time. The trial has not started and it will take a long time and therefore, the applicant

be released on bail. He is ready to abide by the conditions. Learned Advocate for the applicant further submits that the charge-sheet in respect of cross complaint is not yet filed and also that CDR has not been collected.

5. The learned APP for the respondent strongly opposes the application and submits that first of all the applicant, who is in Police Department cannot indulge himself in such kind of activities. The contents of the FIR as well as the statements of the witnesses under Section 161 as well as Section 164 of Code of Criminal Procedure are very much similar. All of them consistently showing that the present applicant had assaulted the informant by sword. Though that sword appears to have been recovered from co-accused, it cannot give a right to the present applicant to seek bail. There is ample evidence against the present applicant. The informant had received grievous injuries. A blow was with an intention to kill and treating Doctor has certified that the injuries, which were noted on the person of the informant, are possible by the seized sword. Therefore, entire link is there. There is direct evidence against the present applicant and therefore, he does not deserve to be released on bail.

6. Since the prosecution story has already been covered in

aforesaid paragraphs, it is not repeated. We are required to consider basically at this stage what role has been attributed to the present applicant. The contents of the FIR, statements of the witnesses, especially the father and the other two persons namely Ram Mariba Deokar and Bhima Balaji Gaikwad show that it was the present applicant, who had given the blows of sword and those have been avoided by the informant by putting his hands. The Medico Legal Certificate supports the FIR and the statements. So also the opinion has been given by the treating Doctor that such injuries are possible by the seized sword. Now, the said discovery under Section 27 of the Indian Evidence Act is through another accused. How that has to be connected would be an endeavour for the prosecution but then Section 27 of the Indian Evidence Act makes such discovery of fact admissible, which is within the knowledge of the particular accused. Whether in addition to Section 27 of the Indian Evidence Act, Section 30 of the Indian Evidence Act can be invoked will have to be decided by the trial Court but that is the piece of evidence in this case.

7. As regards the cross complaint, what can be taken note of the fact is that the presence of the applicant is mentioned and then it is stated that the accused persons, whose names are mentioned therein, had manhandled the applicant. Therefore, at

the stage, his presence at the spot is rather highlighted because of the said cross complaint.

8. Another fact to be noted is that the applicant is a Driver employed with the Police Department. He is supposed to be on duty 24x7, even if he might not be having duty on a particular day, that does not permit him to leave the headquarter without getting permission from his Superiors. The posting of the applicant at the relevant time is stated to be with Degloor Police Station in Nanded District and the incident has taken place at Nanded. I am told by the learned APP that the distance between Degloor Police Station, Degloor to Nanded is about 80 kms. Therefore, when there is *prima-facie* evidence against the applicant, he does not deserve to be released on bail.

9. Bail Application stands rejected.

10. The observations above are made for deciding the bail application and the trial Court shall not get influenced by the same.

(**SMT. VIBHA KANKANWADI**)
JUDGE

SPT