

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.468 OF 2022

SOHAIL S/O CHAND SHAIKH
AND OTHER TWO
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. E. Shekade
APP for Respondent-State : Mr. S. B. Narwade
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-04-2022

ORDER :

1. The applicants have been arrested on 02-03-2022 in connection with Crime No.20 of 2022, registered with Bhingar Camp Station, Ahmednagar, District Ahmednagar, for the offence punishable under Section 307, 326 r.w.34 of IPC. They have filed present application under Section 439 of Cr.P.C.
2. Heard learned Advocate Mr. S. E. Shekade for applicant and learned APP Mr. S. B. Narwade for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.
3. The FIR has been lodged by one Nevin Sanjay Mane on 12-01-

2022 in respect of an incident that had allegedly taken place at about 08.00 p.m. on 11-01-2022. According to the informant he had gone to purchase new mobile in a mobile shop near Saibaba Temple. At that time, present applicants were present along with one Baba. All those three persons came to the shop where the informant was and started taunting that they know who the informant is. Thereupon the informant told him that they would see what he can do, why they are talking in such a manner. Then the informant called his sister and brother. The sister and brother of the informant started asking the present applicants as to why they are picking up quarrel with the informant. However, the accused persons got annoyed and started assaulting informant, his sister and brother. It is then stated that the applicants had assaulted them by scythe. The blow was received by the informant on his head. His sister received the blow on her hand and brother received the blow of the scythe on his hand and neck. According to the informant the applicants had tried to kill them. Thereafter, all the three accused persons fled away from the spot. The informant and others were taken to Crystal Hospital, Ahmednagar, and then he lodged the report.

4. Important point to be noted is that the informant appears to be the person who had called his sister and brother, so the triggering point was the action of the informant himself. If we consider the Medico Legal Certificates of sister Vidya issued by District Hospital, Ahmednagar, then she had sustained incised wounds to left forearm with probably sharp object, but the nature of the injury is simple. Informant's brother has sustained incised wound to right forearm with sharp object and the nature of the injury is simple. The informant's certificate has been issued by Crystal Hospital and it states that he had sustained blunt trauma head injury, however, the nature is simple, and second is blunt trauma to left parietal region and the nature is simple. Therefore, taking into consideration simple injuries sustained, whether offence under Section 307 of IPC can be said to have been made out, is a question.

5. Substantial investigation appears to have been completed. The recovery and discovery part is over under Section 27 of the Indian Evidence Act. The other documents of the hospital have also been collected and it shows that the informant was admitted in ICU, still what has been collected in the form of injury certificate by the

same hospital is that it is simple injury. Statement of the owner of the mobile shoppee has been recorded and he says that the informant had come to purchase new mobile in his shop and the present applicants went there and started abusing informant. The assault took place in front of the mobile shoppee. The applicants are stated to have assaulted informant by kicks and fists and made him to lie on the ground and then applicant No.1 had picked up a big stone and hit it on the head of the informant. He then started crying for help and then informant's sister and brother came. It is then stated that applicant No.2 had picked out some sharp weapon from his pocket and inflicted its blow on the hand of the informant. So this story is some what different from the story told in the FIR. Of course in the supplementary statement, the informant has made necessary changes. The arrival of the sister and brother of the informant is also differently told by the independent witness i.e. the mobile shop owner. It is also different from the statement of the sister and brother of the informant. The other two witnesses have also given slightly different story. It also appears that the CCTV Footage has been collected, however, the police papers do not curtail the transcription of the CCTV Footage. With this kind of evidence the applicants need not be kept behind bar for indefinite

period. By imposing stringent conditions, they can be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicants No.1 Sohail s/o Chand Shaikh, No.2 Shoaib s/o Chand Shaikh, and No.3 Baba @ Riyaj Muniyar Pathan, who have been arrested in connection with Crime No.20 of 2022, registered with Bhingar Camp Station, Ahmednagar, for the offence punishable under Section 307, 326 r.w.34 of Indian Penal Code, they be released on P.R. of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.
- 3) The applicants shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not reside in Nagardeole, Taluka and District Ahmednagar, and shall not indulge in any criminal activity.
- 5) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.