

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

BAIL APPLICATION NO. 471 OF 2022

Surjeet s/o. Bansi Shirole .. Applicant
Age.36 years, Occ. Agriculture,
R/o. At Post Chimbhale, Tq. Shrigonda,
Dist. Ahmednagar.

Versus

The State of Maharashtra .. Respondent
Through the Police Inspector,
Belwandi Police Station,
Tq. Shrigonda, Dist. Ahmednagar.

Mr.Vijay S. Wakale, Advocate for the applicant.
Mr.A.A. Jagatkar, APP for the respondent/State.

CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 02.05.2022
PRONOUNCED ON : 06.05.2022

ORDER :-

01. The applicant has been arrested on 08.02.2022 in connection with Crime No.45 of 2022 registered with Belwandi Police Station, Shrigonda Dist. Ahmednagar for the offences punishable under sections 307, 324, 323, 337, 327, 143, 147, 148, 149, 504, 506, 341 of the Indian Penal Code and section 4/25 of the Indian Arms Act and section 37(1)(3), 135 of the Bombay Police Act.

02. Heard Mr.Vijay S. Wakale, learned Advocate for the applicant and Mr.A.A. Jagatkar, learned APP for the respondent/State.

03. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. No such incident as alleged in the FIR has ever taken place. As per the informant the incident had taken place in the intervening night of 26.01.2022 to 27.01.2022. However, the documents attached by the applicant would show that the real brother of the applicant got married at Aurangabad on 26.01.2022. The marriage was scheduled at 04=00 pm but in-fact it was performed at about 05=30 pm at Aurangabad. Thereafter, the marriage ceremonies were performed and dinner was taken by all the persons who attended the marriage ceremony. The applicant along with bride and bridegroom left Aurangabad at around 11=00 pm onwards and returned to their village at around 01=30 am to 02=00 am. Even as per the FIR the incident had taken place at a place about 1 to 1.5 km away from the village. In order to support the said contention the applicant has produced CC TV footage, photographs of toll plaza as well as receipts in respect of the vehicle in which the family members, who attended the

marriage ceremony, had come. Therefore, it is highly impossible that any such incident would have been caused by them at 02=30 am. The entire family has been roped. The FIR is also clear to state that there is previous enmity and offence under section 307 of the IPC is still pending against each other's family members. The investigation is almost over and nothing is required to be recovered from the applicant. The applicant is, therefore, ready to abide by the terms of the bail.

04. Per contra, learned APP has strongly opposed the application and submitted that though present application is under section 439 of Cr.P.C. yet gold chain, gold ring and cash of Rs.18,000/-, taken away by the accused persons, are yet to be recovered. The applicant is already involved in the offence under section 307 of the IPC and while on bail he has committed present offence. The informant has received grievous injuries due to the assault by the accused persons.

05. At the outset it is to be noted that one Balasaheb Babasaheb Adagale has lodged report on 07.02.2022 in respect of the incident which is alleged to have taken place in the intervening night of 26.01.2022 to

27.01.2022. According to him in all five persons had assaulted him and he is including the name of mother of the applicant also as an accused person. Though there may be enmity and present applicant was involved in the previous crime under section 307 of the IPC, we cannot forget, even the informant is an accused in cross-complaint at that time under section 307 of the IPC. The documents to that effect have been produced on record by the applicant. It is stated by the informant that each one of the accused was holding some weapon and they abused him and without saying anything in order to assault him they started beating him. The role attributed to the present applicant is that he assaulted the informant by steel rod of shock-absorber of motorcycle. The assault was on the hands and as a result of that assault he fell down in a ditch. Rest of the acts of assault are assigned by him to the co-accused. The medical certificate issued by Pyramid Hospital, Daund, Dist. Pune would show that there is no injury to the hands of the informant. It is stated that he suffered fracture to left ankle. The documents further show that he had prayed for approval for cashless facility from Mahatma Jyotirao Phule Jan Arogya Yojana. In that it is stated that he had suffered fracture of right ulna and he had given consent for open reduction and internal fixation of long bone fractures. Another claim was made for fracture of left middle

malleolus and third one is for fracture of left side radius and ulna. For fracture of hands whether section 307 of the IPC can be attracted is a question. At the same time we are also required to consider the statement of Dr. Sachin Shivajirao Jadhav, who is running hospital by name Shivam Hospital and Nursing Home at village Chimbhale. The informant was taken to his hospital immediately after the incident and then he says that at about 02=15 pm his Compounder – Anil Jadhav had called him stating that some patient has come. Since the Doctor is from same village, he had identified him and asked him as to what had happened. The informant told him that he was returning from *Jagran Gondhal* from the house of one Waghole and he has been assaulted by somebody. Thus, at that time the informant had not disclosed the name of any assailant. The Doctor says that since the informant had received serious injuries, he asked the informant to go to the Government Hospital.

06. The applicant has undergone necessary custody and nothing is to be recovered at his instance now. Now as regards the plea of alibi is concerned, it will have to be proved by the applicant at the time of trial. However, there appears some element in the stand taken by the applicant that

since there was marriage of his real brother at Aurangabad and the distance between his village and Aurangabad is considerable, whether the incident as alleged by the informant had taken place or not itself is a question and therefore it permits this Court to use its discretionary power for release of the applicant. Hence, following order :-

ORDER

- i) The application stands allowed.
- ii) The applicant- Surjeet s/o. Bansi Shirole, who has been arrested in connection with Crime No.45 of 2022 registered with Belwandi Police Station, Shrigonda Dist. Ahmednagar for the offences punishable under sections 307, 324, 323, 337, 327, 143, 147, 148, 149, 504, 506, 341 of the Indian Penal Code and section 4/25 of the Indian Arms Act and section 37(1)(3), 135 of the Bombay Police Act, be released on PR of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand).
- iii) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv) The applicant shall co-operate with the investigation and shall remain present before the Investigating Officer on every Monday between 10=00 am to 02=00 pm, till filing of the charge-sheet.

v) Bail before Trial Court.

[SMT. VIBHA KANKANWADI, J.]