

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

**BAIL APPLICATION NO.432 OF 2022
WITH
CRIMINAL APPLICATION NO.1354 OF 2022**

1) Saurabh Sunil Patil

2) Niraj Sunil Patil

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Satej S. Jadhav Advocate for Applicants in
Anticipatory Bail Application No.432 of 2022.
Mr.V.S. Badakh, A.P.P. for Respondent-State.
Mr.A.J. Patil Advocate for Applicant in Criminal
Application No.1354 of 2022.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 13th APRIL, 2022

ORDER :

1. Criminal Application No.1354 of 2022 moved for assist to
APP stands allowed.

2. The applicants have been arrested on 14th February 2022
in connection with Crime No.5 of 2022 registered with Nimbhora

Police Station, District-Jalgaon for the offence punishable under Sections 307, 326 read with Section 34 of the Indian Penal Code. Present Application has been filed under Section 439 of the Code of Criminal Procedure.

3. Heard learned Advocate Mr. Jadhav for the applicants and learned APP Mr. Badakh for the respondent - State well assisted by learned Advocate Mr. A.J. Patil for the informant.

4. It has been vehemently submitted on behalf of the applicants that the First Information Report (for short "FIR") is the outcome of a concocted story and suppression of facts. Informant resides about 1 and ½ Kms. away from the spot. Rather the house of the applicants is near the spot. Informant was constantly stalking and harassing the wife of applicant No.1 by giving missed calls on her cell phone. It is stated that wife of applicant No.1 was seven months pregnant and therefore, when on the day of incident informant was near the house of the applicants, applicant No.1 questioned about his conduct. When informant stated that he would assault applicant No.1, applicant No.2 came out of the house and in order to save his brother the stick which was lying on the ground was used. The entire incident was captured in the CCTV and as per the information of

the applicants, the CCTV footage has been collected. It will not disclose the use of any iron rod or hockey stick because that was not used at all by the applicants. There was no intention to kill the informant. The injury certificate would show that there is simple injury as well as fracture to femur i.e. on the non vital part of the body. Therefore, ingredients of Section 307 of the Indian Penal Code are not attracted at all. The investigation is almost complete and the applicants are ready to abide by the terms of the bail.

5. Learned APP well assisted by learned Advocate Mr.A.J. Patil for the informant strongly opposed the application. The attack on the person of the informant was with iron rod and hockey stick with an intention to kill the informant. There are also previous incidences and therefore if the applicants are released on bail, they would pressurize the informant and other witnesses whose statements have been recorded. Since there is evidence against the applicants in the form of discovery and also the medical certificate showing the grievous injuries sustained by the informant, the applicants do not deserve the bail.

6. The FIR has been lodged by one Rahul Shriram Patil at 19.00 hours on 25th January 2022 (though it appears that in the printed format there is some mistake about the date and hour) and it is in respect of the incident at about 7.00 p.m. on 24th January 2022. There is specific allegation that present applicant No.1 had assaulted the informant with iron rod and applicant No.2 is stated to have used hockey stick. In the FIR the portion of the body on which the blow was received, has not been mentioned. However, later on it is stated that it has caused fracture on his left thigh and grievous injury to his head. The medical certificate issued by one Saipushpa Accident Hospital, Bhusawal would show that informant had sustained four injuries, first is fracture to right femur, second injury is to left leg-hematoma, third injury is to right forearm hematoma and fourth injury is stapled wound over occipital scalp. Nature of injury is given as grievous. In his FIR, informant has stated that he was initially treated at Kuyate Hospital, Raver but the police papers do not show that the Investigating Officer has collected that certificate. The Investigating Officer appears to have shown the said medical certificate to the Medical Officer, Rural Hospital, Raver for his opinion and in that opinion, he has stated that there was fracture to the right femur, then hematoma to left leg,

then hematoma from right wrist to elbow and about fourth injury, it is stated to be that the injury to occipital region was stapled. Where this stapling has been done, is not known. But there appears to be the grievous injury to the head as well as leg and also to the occipital region.

7. Statements of witnesses have been recorded. Some of them have stated that they were present at the spot and had seen the applicants' giving assault. But then, some of them are relatives of the informant and they have stated that after they were called on phone, they had reached the spot. That chain of calling each other is then required to be considered by the trial Court to assess the presence of those eye witnesses. The weapons allegedly used in the commission of the crime have been stated to be discovered under Section 27 of the Indian Evidence Act. Now, when substantial part of the investigation is complete and though the CCTV footage appears to have been collected but its transcription has not been made part of the police papers, with stringent conditions the Application deserves to be allowed. The fact that it will take long time to decide the case on merits, is also considered, so also the point that there

are no criminal antecedents pointed out. Hence the following order:-

ORDER

- i) The Application stands allowed;
- ii) Applicant No.1 – Saurabh Sunil Patil and applicant No.2 – Niraj Sunil Patil be released on bail in connection with Crime No.5 of 2022 registered with Nimbhora Police Station, District-Jalgaon for the offence punishable under Sections 307, 326 read with Section 34 of the Indian Penal Code on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.
- iii) The applicants shall not enter the jurisdiction of village Nimbol, Taluka-Raver, District-Jalgaon for any reason till the conclusion of the trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their Mobile Numbers to the Investigating Officer as well as trial Court.

- iv) The applicants shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner;
- v) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]

asb/APR22