

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1438 OF 2021

DIPAK MURLIDHAR SHINDE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.S. Gandhi, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th DECEMBER, 2021

PRONOUNCED ON : 04th JANUARY, 2022.

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by accused No.2, as per First Information Report in Crime No.142/2021 registered with Pimpalner Police Station, Dist. Beed, for the offence punishable under Section 302, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.S. Gandhi for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the investigation is complete and the charge sheet has been filed. The applicant is in jail since 28.06.2021. Perusal of the First Information Report would show that the presence of the applicant is stated and it is stated that he had assaulted the informant by stick. The alleged weapon has been seized. It is stated that the father of the informant expired in the incident but he was assaulted by accused Ravi with spade and not by the present applicant. Therefore, after collecting the evidence when Section 302 of the Indian Penal Code is added, it cannot be made out against the present applicant. He deserves to be released on bail.

4 Per contra, the learned APP has strongly opposed the application and submitted that the applicant, his brother Ravi and their father Murlidhar had come together at about 8.45 p.m. They were armed with weapons. Prior to that accused Ravi had called brother of the informant outside the house and there was assault between them. It was objected by the informant and while leaving the place Ravi had given threat and thereafter they came armed. This shows their intention to kill. Ravi had assaulted father of the informant by spade. Present applicant assaulted the informant by stick. Mother of the informant also received injuries in the incident. The parties are residing in the nearby area and, therefore, possibility of similar offence

cannot be ruled out.

5 When charge sheet is filed, physical custody of the applicant is not required for the purpose of investigation. The evidence that has been collected would show that the First Information Report would show that the present applicant had used stick to cause injury to the informant. When the medical examination of the applicant is also done, it appears that he had injuries on his person. Supplementary statement of the informant has been recorded after about a month of First Information Report, wherein he states that inadvertently he had not stated that present applicant had also assaulted his father by stick. The Postmortem Report would show that deceased Bhimrao had sustained in all four surface injuries; 1) abrasion on left shoulder, 2) CLW near left eye, 3) CLW near left ear and 4) CLW on left parietal region. Column No.18 would show that there was fracture to the left forearm and fracture to left parietal bone. Column No.19 i.e. Internal Examination shows fracture to parietal bone and there was haemorrhage. Probable cause of death is, death due to intracerebral Haemorrhage due to head injury. Statement of mother of the informant, recorded on the second day of the incident, would show that when accused Ravi had given 2-3 blows of spade on the head of Bhimrao, thereafter, accused Murli had assaulted him by stick. When she went to rescue, the spade had hit her right wrist, then she

says that when the present applicant was assaulting Bhimrao by stick, the said blow was received by her near left thumb. It indicates that in fact, the blow given by the present applicant never hit Bhimrao. Another eye witness who is the niece of the informant, in her statement recorded two days after the incident, has assigned role to the present applicant stating that he was assaulting deceased Bhimrao by stick, but she has not given the part of the body of Bhimrao which received the blow. Other witnesses, whose statements have been recorded, were not present at the spot when the incident took place, but they are in respect of the earlier incident. Therefore, with this kind of evidence the applicant need not be asked to remain in jail. The application deserves to be allowed with conditions. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant viz. Dipak Murlidhar Shinde, who has been arrested in connection with Crime No.142/2021 dated 25.06.2021 registered with Pimpalner Police Station, Dist. Beed, for the offence punishable under Section 302, 504, 506 read with Section 34 of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two

solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

agd