

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1647 OF 2021

1. Jagdish s/o Damodhar Shedge
 2. Kishor s/o Dnyandeo Shedge
- Applicants
- Versus

The State of Maharashtra

Respondent

Mr. V.D. Sapkal, Senior Counsel instructed by Mr. P.A. Bhosle,
Advocate for the applicants.
Mr. S.B. Narwade, APP for respondent/State.
Mr. A.R. Lukhe, Advocate for the informant.

CORAM : M.G. Sewlikar, J.

DATE : 6th JANUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No. 0214/2021 registered with Gondi Police Station, Dist. Jalna, for the offences punishable under Sections 307, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/25 of Indian Arms Act.

2. Facts in brief are that there is civil dispute between the informant/injured and the applicants on account of agricultural land. On 12th June, 2021, the injured had been to Ankushnagar factory for attending some function. When the injured and eye-witness Somanth were returning, the injured noticed that Dnyandeo, applicant No. 2 Kishor, accused Kalyan and applicant No. 1 Jagdish were chasing the injured on two motorcycles. Since it was raining, the informant was searching for the shelter. At that very moment, accused Kalyan threw an iron pipe on the informant. While warding it off, injured and Somnath fell down from the motorcycle. All these four persons came there. Applicant Kishor kicked the injured. On seeing this, eye-witness Somnath ran away. These four persons beat the informant by means of an iron rod on his back and head. Applicant Kishor delivered a blow of knife and applicant Jagdish delivered a blow of sickle on the abdomen and right thigh of the injured/informant. This incident was of 12th June, 2021. First Information Report came to be lodged on 16th June, 2021.

3. I have heard learned Senior Counsel Shri Sapkal for the applicants, learned APP Shri Narwade for the State and learned counsel Shri Lukhe for the informant.

4. Learned Senior Counsel Shri Sapkal submits that the informant is in the habit of filing false case against the applicants. Earlier, eye-witness Somnath had filed Crime No. 203/2021 against the applicants. He submits that applicant No. 1 was released on bail as it was pointed out that a false case was filed. He submits that this Court has observed that there is no prima facie case against applicant No. 1. He further submits that the incident took place on 12th June, 2021 but the First Information Report was lodged on 16th June, 2021 for which, no explanation is forthcoming. He further submits that Somnath is an eye-witness. He could have lodged First Information Report. But he did not do so for which also no explanation is forthcoming. He submits that informant has been discharged from the hospital and no further complications are reported. He, therefore, prays for releasing the applicants on bail.

5. Learned APP Shri Narwade and learned connsel Shri Lukhe submit that this is the second offence registered against the applicants. Applicants have criminal antecedents. They submit that informant was assaulted by all the accused persons including the present applicants. Injury certificate shows that the informant had

two grievous injuries out of which, one injury is on the head and he was referred to Civil Hospital, Jalna, for C.T. Scan. They submit that the weapons have been recovered from the accused persons. They submit that there are other eye-witnesses to the incident. Thus, there is prima facie case against the applicants. They, therefore, pray for rejection of the application.

6. Charge-sheet is filed. On perusal of the charge-sheet and First Information Report, it is seen that the incident took place on 12th June, 2021. At the time of the incident, both the informant and the eye-witness were riding motorcycle. They lost balance because of the iron pipe which was thrown by accused Kalyan at them. First Information Report mentions that applicant Kishor delivered a blow of knife and applicant Jagdish delivered a blow of sickle on the abdomen and right thigh of the injured. Medical certificate shows that one injury is on the abdomen and the another is on the right thigh. Both these injuries seem to have been caused by applicant Jagdish. No injury seems to have been caused by applicant Kishor because there is no stab injury by knife.

7. Prosecution claims that Somnath is the eye-witness. However, First Information Report itself states that Somnath ran away from the spot of the incident. Still, he has mentioned the incident in detail attributing role to each of the applicants. When he had run away from the spot of the incident, how could he see the incident of assault by the accused persons is not explained by the prosecution. There are other eye witnesses as claimed by the prosecution. However, their testimonies belie their claim of they being the eye-witnesses. Their statements show that the incident took place on 13th June, 2021 whereas the incident took place on 12th June, 2021. Therefore, I find it difficult to accept their statement under Section 161 of the Code of Criminal Procedure. Injured has been discharged from the hospital. He was referred to the Civil Hospital for C.T Scan. No abnormality was noticed in the C.T. Scan. No further complications are reported so as to convert the offence into a more serious one. Considering the pandemic situation and the fact that trial is not likely to commence in the near future, I am inclined to release the applicants on bail. Hence the following order :-

ORDER

- i) Application is allowed.

ii) Applicant No. 1 Jagdish s/o Damodhar Shedge and applicant No. 2 Kishor s/o Dnyandeo Shedge be released on PR Bond of Rs.40,000/- (Rs. Forty Thousand) each with one solvent surety each in the like amount in connection with Crime No. 0214/2021 registered with Gondli Police Station, Dist. Jalna, for the offences punishable under Sections 307, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/25 of Indian Arms Act, on condition that they shall not tamper the prosecution evidence and shall not pressurise the witnesses.

iii) Application stands disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge