

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.1308 OF 2021

Vasanta Adtis Ghosale and others

Vs.

State of Maharashtra through Police Station Officer, Police Station, Maregaon,
Tq. Maregaon, Dist - Yavatmal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Imran Deshmukh, Advocate for applicants.
Ms. S. Z. Haider, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/01/2022

Heard Mr. Deshmukh, learned counsel for the applicants and Ms. Haider, learned APP for the non-applicant/State.

2. The applicants are arraigned for the offence punishable under Section 307 read with 34 of the Indian Penal Code, on the ground that on 04.11.2021, all three of them, had assaulted the complainant, who had come to their residence demanding refund of hand loan claimed to have been given by the father of the complainant to the applicant No.1 Vasanta Ghosale, who is the maternal uncle of the complainant. The FIR and statements indicate that the applicant No.1 had assaulted by way of wooden stick from the part of cot lying on the spot and the applicant No.3 had assaulted by means of a crow bar, both assaults on the leg of the complainant. The assault by the applicant No.2 by way of a stick is said

to be on the head of the complainant. The medical report indicates that the injury on the head, was grievous one and in so far as the other injury is concerned, both are not on the vital parts of the body. The applicant Nos.1 and 3 have been arrested on 05.11.2021, and have been refused bail by the Sessions Court, considering the nature of the offence. The charge-sheet is yet to be filed. Learned counsel for the complainant submits that the applicants are behind bar from 05.11.2021 on account of an offence under Section 307 read with 34 of the Indian Penal Code, which in so far as the applicant Nos.1 and 3 is concerned, are not made out. The question of common intention according to him is something which will have to be established at the trial and there is no *prima facie* material in that regard available on record which would indicate existence of the same. He therefore, submits that the applicants need to be enlarged on bail.

3. Ms. Haider, learned AGP for non-applicant/State submits that the common intention is manifest from the combined action of the applicants in the matter of assaulting the complainant, who is the maternal nephew of the applicant No.1 and had been to the residence of the applicants, for demanding repayment of the land loan. She therefore, submits that considering the nature of the injuries, the application needs to be rejected. She further submits that the investigation is almost completed and in due course of time, the charge-sheet would be filed.

4. Having heard the learned counsels, I am of the considered opinion that in so far as the applicant Nos.1 and 3 are concerned, considering the nature of the actions attributed to them, and the nature of injuries suffered as a result thereto, *prima facie* case under Section 307 of the Indian Penal Code, may not be made out against them, considering which, I am inclined to release them on bail.

5. In so far as the applicant No.2 is concerned, the nature of assault and consequent injury attributed to him is clearly on a vital part of the body (on the head) which is also grievous in nature, considering which, in so far as the applicant No.2 is concerned, I do not consider it a fit case, to release him on bail. Hence, the following order.

ORDER

1. The application in so far as it relates to applicant No.2 Tirath Vasanta Ghosale, is rejected.

2. The application in so far as the applicant Nos.1 and 3, is hereby allowed.

3. The applicant No.1 Vasanta Adtis Ghosale and applicant No.3 Dilip Vasanta Ghosale, be released on bail in Crime No.268 of 2021 registered with Police Station Maregaon, Dist. Yavatmal for the offence punishable under Section 307 read with 34 of the Indian Penal code, on executing a bail bond in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one solvent surety each, to the extent Rs.1,00,000/- (Rs.One Lakh).

4. The applicant Nos.1 and 3 shall not tamper with the evidence or the prosecution witness in any manner.

5. The applicant Nos.1 and 3 shall attend the concerned Police Station and shall co-operate the investigation on every Wednesday between 12.00 noon to 4.00 p.m.

6. Any breach of this condition shall *ipso facto* entail in cancellation of bail, if an appropriate motion is moved.

7. Observations made in this order are purely for deciding the present application for grant of bail and learned Judge of the Court below before whom trial will be conducted shall not get influenced by observations made in this order.

JUDGE

Sarkate