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

**BAIL APPLICATION NO.2171 OF 2022
WITH APPLN/340/2023 IN BA/2171/2022**

**LAXMAN RAMRAO POTPHALE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. S.R. Bagal h/f Mr. B.N. Gadegaonkar

PP for Respondent/State : Mr. D.R. Kale

Advocate for Assist to PP./Complainant : Mr. Rajendra Deshmukh,
Senior Counsel a/w. Mr. Govind A. Kulkarni i/b Mr. D.R. Deshmukh

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CORAM : S.G. MEHARE, J.

DATED : JANUARY 31, 2023

PER COURT:-

1. Heard learned counsel for the applicant, learned Public Prosecutor for the State and learned senior counsel for the complainant.

2. It is not in dispute that the applicant and the complainant have a rival group. In an independent inquiry made by the Assistant Superintendent of Police, Nanded, it has been observed that the complainant is politically and financially powerful. The complainant side was pressurizing the police. It has also been opined that due to the false complaint, life of the applicants/accused, their property, reputation was in danger. It also reveal that both the parties were lodging the report against one another. The present applicant was

involved in 8 cases; however, in all those cases he has been acquitted. So, there may not be a case of history-sheeter and the antecedents.

3. Learned counsel for the applicant reading the FIR and the statements of the witnesses Babarao Vajinath Dhonde, Sangam @ Sangameshwar Narayan Yejge, Mahadu Babarao Dhonde and Baburao Ramrao Phuljhadke vehemently argued that there are material contradictions in FIR and their statements. In FIR, the applicant was barely shown present on the spot of the incident. However, the material improvements were made showing the applicant present there with iron rod and assaulting on hands. Referring to their medical certificates, he would argue that none of the injured has suffered the injury over their hands, fingers and one of the witness stated that the applicant assaulted him on leg, but the injury certificate does not support him. Few witnesses are common witnesses in all the cases registered against the applicant and his family members. Since the date of registration of the crime, he was trying to get anticipatory bail. Therefore, it cannot be stated that he was absconding. Not only this, to make the offence serious, false allegations have been levelled against the applicant that he had robbed an amount of Rs.1,45,000/- from the cash counter of the shop of witness Babarao, who is the brother of the informant. The complainant and his family members wanted to see the applicant behind the bar as in previous offences, he was behind the bar for a

long period with his group members. Considering the material improvements in the case, the witnesses cannot be believed. They are stating against the applicant only to teach him a lesson and intending to keep him behind the bar for a long period. Considering the material, he prays for bail.

4. Learned Public Prosecutor has argued that the incident happened on 19.10.2021. The applicant has been arrested on 07.09.2022. So, he was absconding for about a year. The eye witnesses are consistent about holding the iron rod and assaulting the injured with the said iron rod. The iron rod is yet not recovered. The robbed amount has also not been recovered. There is direct evidence against the applicant showing his role in the incident. Though he has been acquitted in earlier crimes, but the fact remains that he was involved in serious crimes. Considering the rivalry between two groups, there may be a serious incident in near future. Hence, he may not be granted bail.

5. Learned counsel for the complainant has admitted the rivalry; however, opposed the bail application contending that the weapon used in the crime and robbed money has been disappeared. Therefore, Section 201 of Indian Penal Code has been applied. The law is settled that the oral statements of the injured would prevail over the medical opinion. The opportunity needs to be granted to substantiate the allegations before the trial Court. The applicant was

the member of the unlawful assembly, therefore, he is responsible for every act committed by the other members of the unlawful assembly. Therefore, he cannot segregate him of the ingredients of Section 149 of the Indian Penal Code. The applicant is a history-sheeter and he did not show a change after his acquittal in the earlier crimes. So far as the witnesses who have been allegedly the witnesses in each case between the applicant and the complainant, are natural witnesses. Fortunately, they were the witnesses in each case, therefore, they cannot be disbelieved. He prayed to dismiss the application.

6. As discussed above, few facts are admitted. The rivalry between two groups is apparent. The complainant side appears to be financially and politically powerful. They were using their all sources. The detailed inquiry report of the Assistant Superintendent of Police supports the contention of the applicant that they are influential persons. Learned counsel for the applicant has correctly pointed out that there were material improvements made by examining the injured. Whatever the allegations have been levelled against the applicant about assault, the medical evidence does not support. What would prevail is a matter of evidence before the trial Court. Pursuing the anticipatory bail may not be branded as absconding. The allegations of robbery is also the material improvement in the case. The applicant is languishing in jail since 07.09.2022. He had undergone the police custody and thereafter, he has been sent to

magisterial custody. Considering the injury reports, use of iron rod falls under the shadow of doubt. Taking the facts into consideration cumulatively, there appears a good case for bail to the applicant on certain conditions. Hence, the following order :

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Laxman Ramrao Potphale, be released on bail on executing PB. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.177 of 2021, registered with Sonkhed Police Station, District Nanded for the offence punishable under Section 307, 395, 326, 327, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, on the conditions that;

(a) The applicant shall not enter his village for six months from the date of the release.

(b) The applicant shall attend the trial on each effective date.

(c) The applicant shall not tamper with the prosecution witnesses.

(iii) Criminal Application No. 340 of 2023 stands disposed of.

(S.G. MEHARE, J.)