

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

BAIL APPLICATION NO.519 OF 2023

1. Shubham s/o Nagnath Dhonde
2. Kirans/o Shankarrao Dhonde ... **APPLICANTS**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Mr. N.S. Ghanekar, Advocate for applicants
Mr. M.M. Nerlikar, A.P.P. for respondent – State, assisted by
Mr. Rajendra Deshmukh, Senior Counsel with
Mr. Govind Kulkarni, Advocate for intervener
.....

WITH

**CRIMINAL APPLICATION NO.1566 OF 2023 IN
BAIL APPLICATION NO.519 OF 2023**

Basweshwar s/o Vajinath Dhonde ... **APPLICANT**

VERSUS

1. Shubham s/o Nagnath Dhonde
2. Kirans/o Shankarrao Dhonde
3. The State of Maharashtra ... **RESPONDENTS**

.....
Mr. Rajendra Deshmukh, Senior Counsel with
Mr. Govind Kulkarni, Advocate for applicant
Mr. N.S. Ghanekar, Advocate for respondents No.1 & 2
Mr. M.M. Nerlikar, A.P.P. for respondent No.3 – State
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CORAM : R.G. AVACHAT, J.

DATE : 21st JULY, 2023

ORDER :

Heard. Criminal Application No.1566/2023 is allowed. The intervener is permitted to assist learned A.P.P.

2. By way of this application, the applicants seek bail in connection with Crime No.177/2021, registered with Sonkhed Police Station, Taluka Loha, District Nanded for the offences punishable under Sections 307, 395, 327, 326, 324, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code.

3. A gist of the prosecution case is as follows :-

The First Information Report (F.I.R.) has been lodged by one Basweshwar (informant) on 19/10/2021. The informant was a Sarpanch of village Sheodi, Taluka Loha, District Nanded. It was a public holiday on 19.10.2021. He was busy in his work as a Sarpanch in Gram Panchayat Office. It was by 10.00 in the morning, his uncle – Mahadu (one of the victim) made a phone call to the informant to state that some persons have surrounded him at bus stand.

He asked the informant to rush to the place. The informant, therefore, went there to find the present applicants and the other 9 co-accused to have been armed with weapons like iron rod, Katti etc. Mahadu had been to a Saloon. He was dragged out of the Saloon and was being assaulted on account of enmity over Gram Panchayat election. Both the applicants herein were armed with Kattis. Both the applicants assaulted Mahadu with those Kattis. They too beat him up with iron rod. Some others were instigating the co-accused. The assailants then assaulted others namely Babarao Dhonde, informant, Baburao Fulzalake. Some of the co-accused did not allow the passers-by to intervene to save the victims. The assailants then left the place brandishing the weapons. The crime was investigated and the charge sheet has been filed.

4. Heard. Learned counsel for the applicants would submit that, the injured had first approached Civil Hospital, Nanded. They took there first aid. Their injury certificates issued by a Medical Officer, Civil Hospital, Nanded indicate them to have suffered simple injuries. The injury certificates have been suppressed from the Court. Those have not been made part of police papers. The informant and others

who claim to have been beaten up, are influential and financially sound. Only with a view to ensure the applicants and co-accused remain behind the bars for long, they got themselves admitted to private hospitals. The medical papers issued by the private hospitals are fake. There was long standing enmity between the two groups. The statements of injured have been recorded 2 – 3 days after the incident. The F.I.R. has also been lodged after little over 12 hours of the incident. A petty incident has been blow out of proportion. The applicants are behind the bars for little over 21 months. It will take time for commencement and conclusion of trial. Pre-conviction detention of the applicants is unwarranted. He, therefore, urged for grant of the application.

5. The learned A.P.P. would, on the other hand, submit that, it was a day of Eid-E-Milid. There was, therefore, a public holiday. No Medical Officers were available at the Civil Hospital. The injured had, therefore, no option but to approach private hospital. According to him, the offence was committed in a broad day-light. Not less than 11 accused were involved. It was an offence of rioting. Public peace was disturbed. Each and every

member of the unlawful assembly would, therefore, be guilty of the offence of which they are proposed to be prosecuted. The applicants herein have wielded sharp weapons. It was a bid on the life of more than three persons. The applicants have actively participated in the crime in question. Co-accused have, in the past, indulged in serious offences like murder and grievous hurt. There is even conviction for offence of murder. The trial Court may be directed to expedite hearing of the case and conclude the same in a time-frame. The learned A.P.P. ultimately urged for rejection of the application.

6. Learned Senior Counsel appearing for the intervener would submit that, it being a public holiday, the injured had no option but to be admitted in private hospital. Applicant Shubham was found to have secured admission for D. Pharmacy, illegally. He was behind the bars. Someone else secured admission for him. It might be a case of impersonation. The applicant Shubham, therefore, cannot claim to be a student taking education in D. Pharmacy. The medical papers issued by the private hospital were adverted to. According to the learned Senior Counsel, with the grace of God, lives of injured were saved.

The learned Senior Counsel took this Court first to the F.I.R. and then to the statements of the victims. According to him, the applicants wielded sharp weapons. Their assaults were aimed on the vital parts, like head and neck of victims Mahadu and Baburao. The victim Baburao, however, raised his hand to ward off the blow. The blow, therefore, landed on the palm. Another assault was on the shoulder. The photographs of the injured were brought to the notice of this Court to suggest how serious the offence was. According to learned Senior Counsel, besides four injured witnesses, there are independent eye witnesses as well. Some of the injured/ victims were in hospital for four months. Details thereof have been pointed out with reference to the medical papers issued by those hospitals namely Yashosai Hospital, Nanded and CIIGMA Hospital, Aurangabad. The learned Senior Counsel ultimately urged for rejection of the application.

7. Considered the submissions advanced. Perused the F.I.R. and the papers of investigation. Also gone through the documents relied on. Admittedly, all was not well between the two groups. There is a long standing enmity over Gram Panchayat elections. The F.I.R. was

lodged 12 hours after the incident. The injured/ victims had first been to the Civil Hospital, Nanded. The injury certificates issued by Civil Hospital have been placed on record by the applicants. Those certificates indicate the victims to have suffered injuries, simple in nature. It is not known as to why the investigating officer has not secured these injury certificates to make them part of police papers. Be that as it may. It is true that, the medical papers of the private hospitals and the photographs suggest the victims to have suffered. Some of them were indoor patients for not less than 30 days. One of the injured namely Babarao sustained head injury. It was an offence of rioting. The question is, what was the role played by the present applicants in the alleged crime. Was it an attempt to commit murder. It is, therefore, necessary to scan the F.I.R. and the statements of the injured. Needless to mention, the observations are prima facie in nature and the trial Court shall not be influenced thereby.

8. In the F.I.R., both the applicants allegedly assaulted Mahadu with Kattis. The F.I.R. is silent to state body part of Mahadu on which the assault was made. No doubt, taken the offence collectively, it may sound to be

serious one. This Court, while granting the bail to one of the co-accused, has observed the other side (victims) were influential and financially sound. It has also observed that, Section 395 of the Indian penal Code has been invoked deliberately.

9. True, the medical papers issued by the private hospitals suggest the victims to have suffered some of the injuries, grievous in nature.

10. Statement of Mahadu indicates that applicant Shubham wanted to mount an assault on his head with a Katti. He, however, raised his hand to ward off the blow. The blow fell on the left palm. The fact remains, by the assault allegedly made by the applicant Shubham, Mahadu suffered injury to his left palm. Mahadu's statement has been recorded five days after the incident. His injury certificate issued by Civil Hospital indicate him to have suffered 5 injuries, simple in nature.

11. Statement of Baburao Fulzalake (other victim) was also recorded on 24th October i.e. 5 days after the incident. True, both of them were in hospital. There is, however, nothing to indicate that both of them were unconscious to make a statement for little over 4 days and, therefore, their statements

could only be recorded on 24th. Applicant Shubham is alleged to have assaulted him (Baburao) on his head with a Katti. Injury certificate issued by Civil Hospital indicates Baburao to have suffered 3 simple injuries. Those certificates indicate the injured to have left the Civil Hospital without informing the doctors there. True, Baburao suffered one of the three injuries on his occipital region. The applicant Kiran attempted to assault on his neck. He, however, ward off the blow. The blow, therefore, fell on his thumb.

12. Then there is statement of Babarao Dhonde. Applicant Kiran allegedly kept his leg on his neck so as to facilitate others to assault him. Babarao did not suffer any neck injury. His statement has been recorded three days after the incident.

13. Then there is statement of Sangam @ Sangameshwar. Applicant Kiran is alleged to have assaulted him on his left thigh with a Katti. His injury certificate issued by Civil Hospital suggests him to have not suffered any injury to his thigh. True, there are other eye witnesses as well. Injury certificates and medical papers issued by private hospitals suggest the victims to have suffered some of the injuries

grievous in nature. The medical case record of one of the victims indicate that his injury was required to be sutured. He was still taken away from the Civil Hospital. True, for being treated at a private hospital.

14. There are 11 accused. Charge has not yet been framed. The applicants are behind the bars for little over 21 months. It will take time for the commencement of trial and conclusion thereof. Injury certificates issued by Civil Hospital are inconsistent with the medical record of the private hospitals. The applicants have no such criminal antecedents so as to take it to be an adverse to grant them relief. The victims are said to be influential and financially well off. There is no likelihood of the witnesses being tampered with. The applicants have roots within the limits of the Court seized of the case. I am, therefore, inclined to grant the applicants bail. Hence the order :

ORDER

(i) The Bail Application is allowed.

(ii) The applicants be released on bail in connection with Crime No.177/2021, registered with Sonkhed Police Station, Taluka Loha, District Nanded for the offences

punishable under Sections 307, 395, 327, 326, 324, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code on their executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount.

(iii) The applicants shall not tamper with the prosecution evidence.

(iv) The applicants shall attend the concerned police station twice a month i.e. on 2nd and 4th Sunday of every month between 8.00 p.m. and 9.00 p.m. for next 12 months.

(R.G. AVACHAT, J.)

fmp/-