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

**BAIL APPLICATION NO. 2102 OF 2023
MANOJ NANASAHEB BHALEKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA.**

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Mr. S.G. Ladda, Advocate for applicant;
Mrs. P.J. Bharad, APP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11TH DECEMBER, 2023

ORDER :-

1. The applicants are seeking bail in connection with Crime No. 110 of 2022 dated 24.3.2022, registered with Chikhalthana Police Station, Dist. Aurangabad for the offences punishable under Sections 307, 323, 324, 326, 427, 504, 506, 120B, 143, 147, 148, 149 of the IPC, Section 4/25 of the Arms Act and U/sec. 135 of the Maharashtra Police Act,

2. Investigation was set in motion on the basis of information given by Sheetal Kalyanmal Pahade, alleging that he is engaged in the business of Paver Blocks. On 23.3.2022 he went to the agricultural field of Rehman Bhai situated at Gat No. 141 at Nipani for cleaning the land alongwith other 6 persons. While they were doing their job, accused Manoj Bhalekar, Sachin Atmaram Palaskar, Ajay Atmaram Palaskar and other unknown accused persons arrived at the spot in two different four-wheelers. They alighted from the vehicle. Accused Ajay Palaskar was holding a knife. Accused Manoj Bhalerao was holding sword. Accused Sachin Palaskar was holding iron rod and others were holding sticks. Accused Manoj questioned the presence of informant and others in the

land and threatened them to kill. Suddenly, accused Ajay Palaskar stabbed on the stomach of the informant. At the same time accused Manoj Bhalekar attempted assault of sword on informant which hit on the head of Adil Hillabi. Thereafter accused Manoj Bhalekar and his companion raised assault on informant and others by sticks and iron rods knife and sword, with intention to kill them. The first informant and others have suffered injuries on account of attack.

3. On the basis of aforesaid information Crime No. 110 of 2022 came to the registered with police station Chickalthana for the aforesaid offences against 3 named and other 8 unnamed accused persons. It appears that the applicants had moved this Court for grant of anticipatory bail. Accordingly applicant No.1 was granted protection of pre-arrest bail vide order dated 18th April 2022 in ABA No. 634 of 2022. Similarly applicant Nos. 2 and 3 had also filed bail application No. 1171 of 2022 for anticipatory bail along with 3 others. However, during the pendency of the said application, fresh crime No. 269 No. 2023 came to be registered against the applicants for the offence punishable under Section 302 of IPC.

4. Consequent upon the registration of aforesaid crime, this Court cancelled Bail granted to accused No.1 Manoj vide order dated 8.8.2023 observing that the applicant Manoj has flouted the conditions of bail and misused the liberty granted to him. The Bail Application No. 1171 of 2022, has been withdrawn by the applicant No.2 Rameshwar and same came to be dismissed in respect of applicant No.3 – Vikas. All the 3 applicants then approached Sessions Court upon their surrender, invoking provisions of Section 439 of Cr.P.C. The learned Sessions Judge,

after hearing the respective parties, rejected the application vide order dated 8th November, 2023. Hence, this application.

5. Mr. S.G. Ladda, learned advocate for the applicants vehemently submits that the applicants have been falsely implicated in aforesaid crime. There is a civil dispute concerning the agricultural lands bearing Gat No. 141 and 117, owing to which a concocted version is introduced by way of FIR implicating the applicants. The applicant No.1 Manoj was enlarged on anticipatory bail vide order dated 18.4.2022 passed in Criminal B.A. no., 634 of 2022. However, said order was rescinded only on account of registration of subsequent Crime No. 269 of 2023 observing that the applicant breached the conditions of bail granted to him. Mr. Laddha further submits that even applicant No.2 Vikas was denied protection of anticipatory bail owing to subsequent registration of offence in Crime No. 269 of 2022. The application filed by accused Rameshwar for grant of anticipatory bail was withdrawn. Mr. Ladda submits that the investigation in the crime is complete. Charge sheet is filed. Referring to the statement of the witnesses and medical evidence, he would submit that it is a case of over implication.

6. The learned APP strongly opposes the prayer for grant of bail. She would submit that the applicants are habitual offenders. The applicant No.1 while enjoying the protection of pre-arrest bail in this case indulged himself in serious offence. Consequently, Crime No. 269 of 2023 has been registered for the offence under Section 302 of IPC. Even applicant Nos. 2 and 3 are named as accused in the said crime. She would submit that there is ample evidence on record to establish the guilt of the accused. They had formed unlawful assembly and raised

attack on informant and others using deadly weapons with intention to cause death. According to learned APP, the charge sheet contains sufficient material in the form of statements of eye witnesses, supported by medical evidence. Since case is already committed, trial itself can be expedited in the facts of the case.

7. Having considered the submissions advanced, it is apparent that contents of the FIR makes attributions against the applicant No.1 Manoj to have inflicted injury on the head of Adil Hillabi using the sword in his hand. Consequently, said Adil suffered serious injury on his head. The Medical Certificate in respect of Adil Hillabi dated 23.2.2022 shows that he suffered CLW on right side of forehead, measuring 10 x 1 cm. The nature of injury does not depict assault strictly by sword. Further, in narration of history, the attribution of assault is made against unknown person. So far as applicant Nos. 2 and 3 are concerned, they are not named in the FIR. Although the statement of Shaikh Abdul Raheman states about presence of applicant Nos. 2 and 3 alongwith other accused persons, and they were alleged to have holding swords, there is no specific allegation of assault being raised by them. Therefore, prima facie, case does not constitute ingredients of Section 307 or 326 of IPC.

8. It is true that applicants are subsequently named as accused persons in Crime No. 269 of 2023 for offence under section 302 of IPC. However, while considering the merits of the present case, it would be apposite to look into the allegations and evidence available against them. It is informed during the course of arguments that till this date, applicants are not granted bail in Crime No. 269 of 2023, which is registered subsequent to present crime. As rightly pointed out by Mr.

Ladda, the parameters for grant of anticipatory and regular bail are different. Although the applicants were not found entitled for grant of pre-arrest bail after their surrender, investigation progressed leading to filing of charge sheet. Hence, their further detention would not be necessary. As such, case is made out for grant of regular bail, however, subject to certain conditions.

ORDER :-

- (i) The application is allowed.
- (ii) Applicants (1) Manoj s/o. Nanasaheb Bhalekar (2) Rameshwar Tukaram Gaware and (3) Vikas Digambar Ghodke, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) each, with one solvent surety of the like amount, each, in connection with Crime No. 110 of 2022 dated 24.3.2022, registered with Chikhalthana Police Station, Dist. Aurangabad for the offences punishable under Sections 307, 323, 324, 326, 427, 504, 506, 120B, 143, 147, 148, 149 of the IPC and under Sections 4/25 of the Arms Act and U/sec. 135 of the Maharashtra Police Act, on the following conditions :-
 - [a] The applicants shall not tamper with the prosecution evidence.
 - [b] They shall attend each and every effective date of trial before the trial court.
 - [c] The shall not indulge in criminal activities.
 - [iii] Needless to mention here that the observations made above are on prima facie consideration of the material on record and are made only for the purpose of deciding the application.
 - [iv] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/