



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.632/2023

Ramlal Bhurya Sawalkar and ors

..VS..

State of Mah., thr.PSO PS Dharni, Amravati

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

Court's or Judge's Order

.....
Shri P.V.Navlani, Counsel for Applicants.

Shri A.M.Kadukar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 17/08/2023

PRONOUNCED ON : 23/08/2023

1. By the present application, under Section 439 of the Code of Criminal Procedure, the applicants are seeking regular bail in connection with Crime No.377/2020 registered with the non-applicant police station for offences punishable under Sections 147, 148, 149, 188, 302, and 307 of the Indian Penal Code.

2. The applicants are arrested on 8.7.2020 on the basis of report lodged by Shivprasad Zapula Chimote, resident of Kesharpur, taluka Chikhaldara, district Amravati with the Dharni Police Station, district Amravati. As per his report, on 7.7.2020 at about 11:30 am, while he was working in field, the applicants entered in the field along with the other co-accused and attacked him and other relatives. On the basis of the said

report, the police have registered the crime against the applicants and the other co-accused. As per the allegations, due to the assault, his father Zapula Babulal Chimote and uncle Rupla Babulal Chimote were succumbed to injuries and other witnesses sustained grievous injuries. In all seventeen persons were prosecuted for the said offence.

3. Heard learned counsel Shri P.V.Navlani for the applicants and learned Additional Public Prosecutor Shri A.M.Kadukar for the State.

4. Learned counsel for the applicants submitted that in the alleged incident one of accused Shamlal Sawalkar was seriously injured and had sustained axe blow on his head and the other parts of body. He was admitted in the Sub District Hospital wherein his statement was recorded on the basis of which Crime No.378/2020 was registered against the informant and the other co-accused. Thus, on the basis of allegations two FIRs are registered regarding occurrence of incident dated 7.7.2020. The applicants are seeking bail on the ground that the FIR is lodged after delay of ten hours. The delay is not explained. The injuries sustained by accused namely Shamlal are not explained by Investigating Agency. The Investigating Officer has filed false certificate showing that no injuries are

sustained by accused Shamlal. However, the applicants have collected the injury certificate which shows that injured Shamlal has sustained the injuries. Learned counsel for the applicants submitted that in Crime No.377/2020, investigation was completed and chargesheet is filed. Learned Additional Sessions Judge concluded trial by examining ten witnesses. From the evidence of the witnesses it reveals that the informant and the accused in Crime No.378/2020 are aggressors and the alleged incident has taken place due to their overt act. Considering the examination of the witnesses is over, no purpose would be served by keeping the applicants behind the bars. He reiterated the contentions and placed on record copies of depositions. He also pointed out from evidence adduced some infirmities, omissions, and contradictions and submitted that the said material sufficiently shows that the informant and the accused in counter case were aggressors. He further placed on record written submissions and submitted that even medical evidence is not supporting the prosecution case. He further submitted that the recoveries made at the instance of the applicants are also doubtful.

5. In support of his contentions, learned counsel for the applicants placed reliance on Criminal Application (BA) No.674/2015 decided on 30.9.2015 wherein this court has

observed that investigation is already over and chargesheet is filed. Till there is a judicial pronouncement about aggressor, further custodial presence of the applicant is not warranted and released the accused on bail.

He also placed reliance on Criminal Application (BA) No.642/2019 decided on 9.8.2019 wherein this court held that since incident arose out of long standing dispute between parties and violence was inflicted by members of rival parties on each other, accused are released on bail.

He further placed reliance on the order of the Honourable Apex Court in Special Leave to Appeal (Cri.) No.11714/2022 wherein it is held that it may be seen that there are cross versions and both sides suffered injuries. The question as to who was aggressor will depend upon appreciation of evidence and will be decided by trial court at an appropriate stage. It is further held that suffice to say that the petitioner has been in custody for more than 14 months. The crucial witnesses have since been examined and there is no likelihood of tampering with the evidence. Even otherwise also the witnesses are close family members of both sides. Hence, there is no likelihood of wining over witnesses.

Learned counsel for the applicants submitted that

the observations made in these three orders squarely applicable to the present case also. As such, he prays that the application be allowed and the applicants be released on bail.

6. Learned Additional Public Prosecutor for the State strongly opposed application on the ground that the informant has specifically attributed role of assault to the applicants. In the said incident, two persons have lost their lives. Though witnesses are examined and now the matter is fixed for argument, the evidence in cross complaint is yet to be recorded. If the applicants are released on, there is likelihood of repetition of the said incident and tampering of evidence and, therefore, the application deserves to be rejected.

7. Having heard both the sides and perused material on record, it reveals that genesis of the incident appears to have occurred due to the civil dispute between the parties. Both the parties are claiming their right over agricultural property survey No.13 admeasuring 3.5 acres due to which the quarrel took place between the parties. Both the parties have claimed their possession over the suit land. It is not in dispute that two persons died in the alleged incident as well as one of co-accused Shamlal Sawalkar received injury in the alleged incident. Though learned counsel for the applicants pointed out

from the evidence adduced by the prosecution that the evidence is suffering from infirmities, omissions, and contradictions, it is not desirable to express any opinion in relation thereto at this stage.

8. The question as to who was aggressor will depend upon the appreciation of the evidence and will be decided by the trial court at an appropriate stage.

9. Considering the apprehension raised by the prosecution of tampering of evidence, the same is not sustainable as the entire evidence is already recorded and all the witnesses are close family members of the informant.

10. As observed by the Honourable Apex Court, that the petitioner is in custody for more than 14 months and crucial witnesses are examined and there is no likelihood of tampering, similar is the case in the present application also.

11. All the witnesses are examined. The applicants are behind the bars since 8.7.2020 i.e. more than two years. As far as the apprehension raised as to repetition of the similar incident is concerned, it can be taken care of by imposing certain conditions. Since conclusion of the trial will take a considerable time, it would be appropriate to release the

applicants on bail by imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) The applicants be released on bail, in connection with Crime No.377/2020 registered with the non-applicant police station for offences punishable under Sections 147, 148, 149, 188, 302, and 307 of the Indian Penal Code, on their executing a P.R.Bond in the sum of Rs.25,000/- by each of them with one solvent surety of the like amount by each of them.

(3) The applicants shall not enter into village Kesharpur, taluka Chikhaldara, district Amravati, till conclusion of both the trials.

(4) The applicants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case and shall not tamper the evidence of the prosecution in any manner.

(5) The applicants shall attend Dharni Police Station once a month i.e. 2nd Sunday of the month between 10:00 am and 5:00, till conclusion of the trial.

(6) The applicants shall furnish their cell phone numbers and

addresses with the addresses' proofs.

(7) Needless to mention that observations above said made in this order are purely *prima facie* for deciding the present application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

The criminal application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!