

Order below Exh.1 in Cri. Bail Application No.257/2022.

{ Budha Pandu Dhore and other Vs. State }

This is an application under section 439 of the Criminal Procedure Code for grant of bail in pending trial.

2. The present application is moved by the applicants-accused Budha Pandu Dhore and Gokul Tukaram Dhore praying to release them on bail in connection with the CR No.885/2021 registered with Trimbak Police Station under section 307, 323, 504 r.w.s.34 of the Indian Penal Code on 9.12.2021 with the alleged incident of attempt to commit murder of victim on 9.12.2021.

3. It is stated in the application that, on 8.12.2021 at about 9.00 p.m. applicant-accused and accused have quarreled on the count of quarrel taken place in the morning and applicant-accused No.1 has allegedly caused injury by stabbing knife on the abdomen of first informant and applicant-accused No.2 has allegedly beaten the brother of first informant Rama on his head by unknown weapon. Now, applicants-accused are in MCR.

4. It is also stated in the application that the applicant-accused have no way connected with the present crime. Applicants-accused and first informant are the close relatives of each other and the first informant has not been caused grievous injury and discharged from the hospital and doing his daily work. The investigation is substantially completed. Applicants-accused are local residents. Applicant-accused are ready to abide any conditions imposed by this court. Lastly, it is alleged in the application that the anticipatory bail application No.194/2022 of accused Shankar Potinde was allowed and the earlier bail application No.1748/2021 of these applicants-accused

was rejected by this court. The investigation is completed and now charge-sheet is filed in the court, Hence, prayed to allow the application on conditions deemed fit by this court.

5. Prosecution has objected the bail application and filed say/report Exh.5 dated 4.3.2022. The first informant has also filed his say at Exh.8 and objected the application. The offence is serious, which is caused stabbing by knife. Accused may threaten the victim and other prosecution witnesses as the victim and applicants-accused are residing in same village, these and other ground set out in the report, application is opposed.

6. Perused the record. Heard, both parties.

7. Learned counsel Shri. Rahul Kasliwal submitted that applicants-accused are agriculturist and no purpose will be served by keeping them behind the bar for indefinite period, because charge-sheet is filed and it will take time to commit the charge-sheet to this court and the injured are discharged from the hospital. During his course of argument he placed on record the injury certificates and photographs of Deoram Dhore and Shivram Patole, who are the brother and maternal uncle respectively of the applicants-accused and sustained injuries and therefore, prayed to allow the application.

8. On the other hand, learned APP Shri. Suryavanshi submitted that both the applicants-accused have assaulted the first informant and his brother with lethal weapons with intention to commit murder, however, fortunately the peoples were gathered on the spot and therefore, the injured have been rescued and provided proper treatment immediately, therefore, they survived, thus, he prayed to reject the application.

9. The learned counsel Shri. A.A. Kardile for original complainant has submitted in his say that the applicants-accused may pressurize the witnesses even after registration of crime. The relatives of the applicants-accused have destroyed the house of the original complainant and are threatening life, if the FIR is not withdrawn. The injured are still taking medical treatment for their injuries. During his course of argument, he relied upon **State of Gujarat Vs Salpeshbhai Navinbhai Patel, 2004 ALL MR (Cri) Journal 66** and **State of Maharashtra Vs Buddhikota Subja Rao, LAWS (SC) 1989 (3) 31.**

10. I have given thought to the present application, also gone through the copy of charge-sheet filed on record. It is true that the court has rejected the bail application bearing No.1748/2021 moved by the present applicants-accused because the investigation was in progress and their names were mentioned in FIR. It is also matter of record that the accused No.3 Shankar Shivram Potinde was granted with relief of anticipatory bail by this court in Cri. Bail Application No.194/2022 dated 16.2.2022.

11. The copy of charge-sheet placed on record shows that the accused Gokul Tukaram Dhore had inflicted with a iron bar to Rama Navsu Dhore on his face and head and caused serious injuries as under:

- i) *CLW to right parietal region, deep 3 x 5 x 4 cm*
- ii) *Left ear swelling*
- iii) *CLW to right frontal region 3 x 1 cm*
- iv) *CLW to left Cheek 2 x 2 cm superficial*

The head injury is caused to both the parietal region and skull. There is fracture to nasal bone. So far as injuries to first informant allegedly to be caused by accused Budha Dhore, it is a stab injury by

knife to his abdomen.

12. Thus, the I.O. has sought the medical opinion as to whether they are fatal injuries. The medical opinion is that those injuries are grievous injuries and there is possibility of death.

13. It is also matter of record that both the parties are close relatives with each other and residing in same village. There is apprehension that applicants-accused may pressurize the witnesses as there is earlier police record against these applicants-accused. A crime is registered against them vide its CR No.819/2021 for the offence punishable 324, 341, 323, 504,506 427, 141, 143, 147, 149 of IPC. On the first information lodged by Hirabai Dhondiram Dagale on 9.8.2021.

14. So far as grant of anticipatory bail to the accused No.3 is concerned the same was granted considering his minor role in the commission of the said offence. Therefore, the same cannot be considered as a parity to the present applicants-accused. In the case hand, to my mind the learned counsel for first informant has rightly relied upon in **State of Gujarat Vs Salpeshbhai Navinbhai Patel, (supra)**,

“Thereafter, merely because in the other proceedings in the inquiry under Section 202 of Cr.P.C. before JMFC the statements as referred to hereinabove are disowned or such witnesses have declared that they have given any statement, in my view, could not at all be said to be a ground for taking totally a reverse view on other aspects also which had no bearing at all to the inquiry proceedings under Section 202 of Cr.P.C. even if it is considered that such was a change of circumstance. Further, as observed earlier, the statements made by the very witnesses pending investigation before the authority cannot be said to be a ground for nullifying the observations made earlier and the ground for invoking power of the Court for considering fresh bail application. Therefore, I

find that the learned Judge in any case otherwise also could not take somersault and record or make observations in total contravention to the earlier observations and prima faice finding recorded in the first order passed in Feb., 2003. Hence, also the order of the learned Sessions Judge granting bail deserves to be quashed and set aside”.

So also in case of **State of Maharashtra Vs Buddhikota Subja Rao, (supra)**,

“Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. 'Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail”.

15. In the result, there is strong case against the applicants-accused, merely filing of charge-sheet cannot be considered as change of circumstance. Therefore, considering the gravity of the offence and the circumstances discussed above the bail application filed by applicants-accused cannot be considered. Hence, following order is passed.

ORDER

1. Bail Application No.257/2022 is hereby rejected.
2. Inform all the concerned accordingly.

Date: 07.03.2022

(M. A. Shinde)
Additional Sessions Judge-8,
Nashik.