

Cri.M.A.(Bail) No. 33/2023
(CNR NO.MHLA040000852023)
Cri.M.A.(Bail) No. 34/2023
(CNR NO.MHLA040000862023)

COMMON ORDER BELOW EXH.1 IN CRI. MISC. APPLICATION
(BAIL) NOS. 33/2023 AND 34/2023

(1) Since both the petitions arise out of same crime, decided by this common order.

(2) The petitioners have an apprehension of being arrested in connection with Crime No. 142/2023 registered with police station Ahmedpur, District Latur, for the offence punishable under Sections 452, 326, 324, 323, 504, 506, 327, 143, 147, 148 read with section 149 of the Indian Penal Code, prayed for protection from arrest by virtue of section 438 of the Code of Criminal Procedure.

(3) **Brief facts -**

Bashid Rashid Syed, resident of village Kalegaon, Tahsil Ahmedpur, District Latur, is the informant. On 14th March, 2023, the informant approached police station Ahmedpur, to lodge report. It is contended that, on 14th March, 2023 at 7.30 a.m. the informant was in front of his home. Naimoddin (**petitioner no.2 in Cri.M.A.(Bail) No.34/2023**) came there and asked informant as to why he collected garbage. He abused the informant. His sons Manjur (**petitioner no.2 in Cri.M.A.(Bail) No.33/2023**), co-accused Siraj and Najmoddin came there, assaulted and abused the informant.

(4) Later, the relatives of Naimoddin, namely Khudbuddin, Mukhid (**petitioner nos.3 and 4 in Cri.M.A.(Bail) No.34/2023**)

alongwith co-accused Sadroddin (**petitioner no. 3 in Cri.M.A. (Bail) No.33/2023**) assaulted informant by means of iron rod, sticks. They also assaulted son of the informant namely Harshad. Naimoddin assaulted Harshad by means of iron rod on his head. Khudbuddin assaulted brother of informant Akhil by means of iron rod on head. Mukhid assaulted on the legs and face of the informant. Juned Syed, Majid Syed came to rescue, however petitioner Manjoor bite on Juned's arm and gave blow by means of stick on his head. Co-accused Siraj extorted Rs. 5000/- kept in the shirt pocket of the informant. While leaving the accused gave threat to cause death to the informant and his sons.

(5) On the basis of F.I.R. lodged by the informant the crime has been registered at C.R. No. 142/2023 for the offence punishable under Sections 452, 326, 324, 323, 504, 506, 327, 143, 147, 148 read with section 149 of the Indian Penal Code.

(6) The petitioners have claimed protection from arrest on following grounds;

- (i) They have not committed the alleged crime.
- (ii) On the basis of report lodged by them, crime No. 144/2023 on 15/03/2023 has been registered against the informant and his family members, for the offence punishable under sections 452, 327, 324, 323, 143, 147, 148, 504, 506 read with section 149 of the Indian Penal Code, to give counter blast, this has been lodged.
- (iii) The petitioners are local residence of Kalegaon, Tahsil Ahmedpur, thus no chances of abscondance.
- (iv) The arrest of the petitioners not necessary for investigation.
- (v) The petitioners will abide all the conditions in case

protection from arrest is granted to them.

(7) Upon receipt of notice, the respondent State has filed reply (Exh.6 in **Cri.M.A. (Bail) No.33/2023**), filed pursis (Exh.6 in **Cri.M.A. (Bail) No.34/2023**) to treat the same as reply in **Cri.M.A. Bail No. 33/2023**.

(8) Heard Shri. Akshay B. Patil, learned advocate representing the petitioners in both bail petitions and Shri. M. K. Patil, learned A.P.P. for respondent State in Criminal Bail Application Nos.33/2023 and 34/2023)

(9) The **Hon'ble Apex Court** in the case of **Prasanta Kumar Sarkar –v/s- Ashis Chatterjee and another, Criminal Appeal No.2086 of 2010, decided on 29 October, 2010**, has held that, while considering the bail petition, the factors which needs to be considered are ;

- (i) whether there was a prima facie or reasonable ground to plea that the accused had committed the offence,
- (ii) nature and gravity of accusation,
- (iii) severity of the punishment in the event of conviction,
- (iv) danger of the accused absconding or fleeing if granted bail,
- (v) character, behavior means position and standing of the accused,
- (vi) likelihood of repetition of the offence,
- (vii) reasonable apprehension of the witnesses being induced and
- (viii) danger of justice being thwarted by grant of bail.

(10) In view of the guidelines of Hon'ble Apex Court in the case of **Prasanta Kumar** (*cited supra*), these bail petitions will have to be considered.

(11) The allegation against the petitioners and co-accused that, they have formed an unlawful assembly, in prosecution of common object of the said unlawful assembly, assaulted informant, his son, nephews, extorted Rs. 5000/- from the informant. Further, gave threats to the informant and his sons to cause death.

(12) It is not in dispute that, on the basis of FIR lodged by Naimoddin (**petitioner no.1 in Criminal Misc. Application (Bail) No.34/2023**) crime no. 144/2023 has been registered against the informant and his family members, on 15th March, 2023 with police station, Ahmedpur for the offence punishable under sections 452, 327, 324, 323, 143, 147, 148, 504, 506 read with section 149 of the Indian Penal Code. It shows that, there are disputes between the families of informant and petitioners.

(13) Upon close scrutiny of the first information report, as well as the statements of some the witnesses recorded during investigation. (**learned Additional Public Prosecutor provided copy of the statement recorded alongwith reply**) shows that, the allegation regarding extort Rs. 5000/- are against Siraj co-accused.

(14) The offence punishable under section 327 of the Indian Penal Code, i.e. voluntarily causing hurt to extort property or to constrain an illegal act, is punishable with imprisonment which may

extend to 10 years with fine. The major offence levelled against the co-accused Siraj under section 327 of the Indian Penal Code.

(15) The injury certificates filed alongwith papers show that, Harshad Syed, Bashid Syed, Akhil Syed have grievous injuries. Harshad and Akhil have head injuries of which opinion pertaining to nature is reserved. Bashid suffered face injury. Allegation regarding assault to the informant, his brother Akhil, his son Harshad are against Naimoddin, Najmoddin, Khudboddin (**petitioner nos.1 to 3 in Criminal Miscellaneous Application (Bail) No.34/2023**) and co-accused Mainoddin.

(16) The injuries sustained to Akhil and Harshad, were on vital part of body i.e. head, by means of iron rod. The assailants were Naimoddin, Najmoddin and Khudboddin. To the extent of these three petitioners, it is not desirable to grant protection, since they played major role in the alleged crime, as well as their acts have caused serious injuries to Akhil and Harshad, on vital part of body. The alleged weapon rod will have to be recovered from those petitioners. They will have to be inquired in detail. Unless Naimoddin, Najmoddin and Khudboddin (**petitioner nos.1 to 3 in Criminal Miscellaneous Application (Bail) No.34/2023**) are arrested the investigation can not be done properly. I therefore, do not find substance in the plea of pre-arrest bail by Naimoddin, Najmoddin and Khudboddin (**petitioner nos.1 to 3 in Criminal Miscellaneous Application (Bail) No.34/2023**).

(17) Against petitioner Manjoor, Mansur and Sadroddin (petitioner nos.1 to 3 in **Criminal Miscellaneous Application (Bail) No.33/2023**) and Mukhid (petitioner no.4 in **Criminal Miscellaneous Application (Bail) No.34/2023**) there are vague allegation of assault by fist, kick blows and stick. Major offence is under section 326 of the Indian Penal Code and under section 327 of the Indian Penal Code. The co-accused who extorted amount is not petitioner before the court. The person against whom section 326 of the Indian Penal Code may attract i.e. Naimoddin, Najmoddin and Khudboddin (petitioner nos.1 to 3 in **Criminal Miscellaneous Application (Bail) No.34/2023**) have denied protection.

(18) Against rest of the petitioners there are no serious allegation of assault on any vital part of body. Without arrest of petitioners Manjoor, Mansur, Sadroddin and Mukhid, the investigation can be done properly. In order to facilitate the investigation, they may be directed to attend the police station, whenever required by the investigating officer.

(19) Thus, the petitioners Manjoor, Mansur and Sadroddin (petitioner nos.1 to 3 in **Criminal Miscellaneous Application (Bail) No.33/2023**) and Mukhid (petitioner no.4 in **Criminal Miscellaneous Application (Bail) No.34/2023**) are entitled for protection from arrest. Whereas, Naimoddin, Najmoddin and Khudboddin (petitioner nos.1 to 3 in **Criminal Miscellaneous Application (Bail) No.34/2023**) are not entitled for any sort of protection. With this, I proceed to pass following order.

O R D E R

- (1) Criminal Miscellaneous Application (Bail) No. 33/2023 is allowed.
- (2) Criminal Miscellaneous Application (Bail) No. 34/2023 is partly allowed.
- (3) Criminal Miscellaneous Application (Bail) No. 34/2023 is rejected for petitioner no.1 Naimoddin Ahmed Sayyed, No.2 Najmoddin Naimoddin Sayyed and No.3 Khudboddin Mainoddin Sayyed.
- (4) The petitioner No.1 Manjoor Naimoddin Sayyed, No.2 Mansur Naimoddin Sayyed and No.3 Sadroddin Mainoddin Sayyed (**Criminal Misc. Application (Bail) No.33/2023**) and petitioner No.4 Mukhid Mainoddin Sayyed (**Criminal Misc. Application (Bail) No.34/2023**), all resident of Kalegaon, Tahsil Ahmedpur, District Latur, in the event of arrest, in connection with C.R. No. 142/2023 registered with police station, Ahmedpur for the offence punishable under Sections 452, 326, 324, 323, 504, 506, 327, 143, 147, 148 read with section 149 of the Indian Penal Code, be released on execution of their personal bond in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand only) with a surety in the like amount.
- (5) The petitioner Nos. 1 to 3 in (**Criminal Miscellaneous Application (Bail) No.33/2023**) and petitioner no.4 in (**Criminal Miscellaneous Application (Bail) No.34/2023**) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court or to Investigating Officer.
- (6) The petitioner Nos. 1 to 3 in (**Criminal Miscellaneous Application (Bail) No.33/2023**) and petitioner no.4 in (**Criminal Miscellaneous Application (Bail) No.34/2023**) shall make themselves available for

interrogation by Investigating Officer as and when required.

- (7) That the petitioner Nos. 1 to 3 in (**Criminal Miscellaneous Application (Bail) No.33/2023**) and petitioner no.4 in (**Criminal Miscellaneous Application (Bail) No.34/2023**) shall not leave India without the previous permission of the Court.
- (8) Investigating Officer be informed accordingly.
- (9) This being a common order, original be tagged with Criminal Miscellaneous Application (Bail) No. 33/2023 which is first in serial number and authenticate copy be tagged in Criminal Miscellaneous Application (Bail) No. 34/2023.

Date : 06/04/2023.

Place:Ahmedpur.

(Vilas V. Gaikwad),
Additional Sessions Judge,
Ahmedpur.