

MHKO010003542021



In the Sessions Court, Kolhapur, at Kolhapur
(Presided over by P.S. Vithalani, Special Judge and Addl.
Sessions Judge, Kolhapur)

Spl. Case No. 21/2021

The State of Maharashtra

.... Prosecution

vs.

Sandip Mhalu Vadar

..... Accused

Order below application at Exh. 3

1] This is second application filed under Section 439 of the Code of Criminal Procedure seeking regular bail by above named accused in connection with C.R. No. 706/2020 registered with Shahupuri police station, Kolhapur for the commission of offences punishable under Sections 307, 324, 504 and 506 of Indian Penal Code, under Sections 3(2)(v) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “S.C. and S.T. Act”) as well as contravention of Section 4 punishable under Section 25 of Arms Act.

2] Stated in brief, case of the prosecution is as under:

I) The first informant belonging to Mang community falling under the Scheduled Caste is residing at Kasaba Bawada, Kolhapur.

Accused is also residing in the same locality. Previously, disputes had occurred between first informant and accused.

II) On 19/11/2020 at 2.30 p.m. when the first informant was returning to home, accused was standing in the chowk situated near the house of first informant. At that time, while proceeding towards home, first informant and accused stared at each other. Then, accused came to the first informant, caught collar of his shirt by saying that why he stared at him and then dragged him up to the chowk by giving abuses in filthy language. Thereafter, the accused went near cement *katta* and brought a sword and started assaulting the first informant by saying that he would not leave him alive. First informant sustained injury on his forehead and above left eye. When first informant's brother intervened, in the scuffle sword got hit on his right palm and accordingly, he sustained injury. During the quarrel, sister of the accused namely Shubhangi assaulted first informant and his brother with stick. By hearing the noise, persons who had gathered pacified the quarrel. At first, first informant and his brother were taken to the police station and from there they were taken to Seva Hospital, Kolhapur for treatment. Whilst under the treatment, first informant gave complaint to the police. Accordingly, aforementioned crime came to be registered.

3] During the investigation, accused was arrested. After his remand in judicial custody, he had previously filed Cri. Bail Appln. No. 1046/2020, which came to be ultimately rejected on merits on 24/12/2020. Now, after filing of the charge-sheet, the present second bail application is filed.

4] According to the accused, previously the present first informant and his companions had assaulted him and accordingly crime was registered against them. Since, first informant was insisting the present accused to withdraw the complaint and as the accused refused, on 19/11/2020 present first informant and his companions assaulted the accused by sword on his head, due to which he sustained grievous injury. Regarding that incident, counter FIR bearing No. 707/2020 has been filed. According to accused, he has not committed any offence. By showing readiness to abide by each and every condition of bail that may be imposed upon by the Court, he has prayed that he be released on bail.

5] As per the provisions of Section 15-A(5) of S.C. and S.T. Act, victim is required to be heard. In the present case, first informant and his brother are victims. On getting the notice from the Court, first informant appeared and filed his reply at Exh. 7, wherein he has stated that both the parties filed cases against each other due to misunderstanding and therefore, he has “no objection” to grant bail to the accused. First informant has also stated that his brother has also “no objection” to grant the present bail application.

6] Notice issued to the brother of the first informant returned unserved with the report that he has gone to Mumbai. However, since first informant himself has stated in his reply that he as well as his brother have “no objection” to grant the bail, there is no necessity to keep pending the present bail application only for the reason that

notice to first informant's brother is not served.

7] Learned A.P.P. Smt. M.B. Patil for the prosecution has given her reply on the application itself. She orally submitted that since charge-sheet is already filed and as first informant has given “no objection” to grant the bail, the report of Investigating Officer is not needed. While giving written reply, learned A.P.P. Smt. M.B. Patil has taken objection for granting bail stating that there is strong evidence against the accused and there is possibility of pressurizing prosecution witnesses by the accused in the event of granting bail.

8] I have heard learned advocate Shri. J.A. Bardeskar for accused, learned A.P.P. Smt. M.B. Patil for the prosecution and learned advocate Shri. G.M. Khan for the first informant.

9] Learned advocate Shri. J.A. Bardeskar for accused submitted that matter has been settled between the parties outside the Court and for that reason, first informant has given “no objection” to grant the bail. According to his further submission, charge-sheet is already filed and hence, further detention of accused in jail is not necessary. He further submitted that accused will abide by each and every condition of bail that may be imposed upon by the Court. Ultimately, he prayed to grant the bail.

10] *Per contra*, learned A.P.P. Smt. M.B. Patil for the prosecution during her arguments strongly opposed the bail application by

arguing as per her written reply and prayed to reject the bail application.

11] Learned advocate Shri. G.M. Khan for the first informant submitted that he has “no objection” for granting bail as compromise has taken place between the parties outside the Court.

12] I have considered the submissions made across the bar by both sides. Perused available material on record.

13] It appears that first bail application of the accused was rejected *inter alia* for the reason that at that time investigation was at the nascent stage. Since, now charge-sheet has been filed on conclusion of the investigation, it can be considered as change in circumstance and hence, the present bail application can be considered on merits.

14] It appears that there is rivalry between the parties. Previously, FIR No. 642/2020 was registered against the present first informant and others *inter alia* for the offence under Section 324 of Indian Penal Code for assaulting the present accused and other persons. It also appears that there is cross complaint bearing No. 707/2020 filed by the present accused against first informant and others. At this stage, it is difficult to decide as to which party was aggressor in the incident. It can be decided only at the time of trial. At this stage, it is only to be seen whether bail can be granted to the accused. It is correct that as per the prosecution story first informant and his

brother were injured in the incident. However, they are discharged from the hospital. Hence, there is no possibility of escalation of offence any further.

15] Already on conclusion of the investigation, charge-sheet has been filed. No purpose would be served by continuing the detention of accused in jail. Trial of the case would take its own time. It would be improper to continue the detention of accused in jail till conclusion of the trial.

16] It is well settled that bail is a rule and jail is an exception. The purpose of bail is neither punitive nor preventive. The object of bail is not to punish the accused before the trial. The purpose is only to see whether accused can be made available to face the trial against him. In the present case, accused is resident of Kolhapur district itself and therefore, his presence during the trial can be easily secured.

17] Looking to the facts and circumstances of the case and particularly the circumstance that on conclusion of the investigation, charge-sheet has already been filed by the police and that first informant has given "no objection" to grant the bail, to my mind, this is a fit case, in which bail can be granted. Hence, the following order is passed -

ORDER

- 1 Application for bail at Exh. 3 is allowed.
- 2 **Accused – Sandip Mhalu Vadar** in connection with

C.R. No. 706/2020 registered with **Shahupuri** police station, Kolhapur for the offences punishable under Sections 307, 324, 504 and 506 of Indian Penal Code, under Sections 3(2)(v) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as contravention of Section 4 punishable under Section 25 of Arms Act, be released on bail on his executing Personal Recognizance bond of Rs.25,000/- with single solvent surety in the like amount.

- 3 Order in respect of bail shall be subject to following conditions.
 - a That, accused shall not make any inducement, threat or promise to first informant or any of the prosecution witnesses so as to dissuade him/her from disclosing any fact to police officer or the Court.
 - b That, accused shall not tamper the prosecution evidence in any other manner.
 - c That, accused shall not commit an offence similar to the offence of which he is accused in this crime.
 - d That, accused shall regularly attend the Court till conclusion of the trial.
 - e That, accused shall not leave India without prior permission of this Court.
 - f That, accused shall submit his contact number and proof in respect of permanent and temporary residence to this Court.
 - g That, accused shall follow the rules/ guidelines issued by the Government and/or District Administration due to prevailing COVID-19 pandemic.
- 4 Inform concerned police station accordingly.

Kolhapur
Date : 01/02/2021

(P.S. Vithalani)
Special Judge and Addl. Sessions
Judge, Kolhapur