

MHKO010028722021

**Sessions Case No. 206/2021****Order below Exh. 5.****The State of Maharashtra VS. Baithul
Abdul Shaikh**

Applicant has filed this application under Sec. 439 of Cr.P.C. for his release in crime No. 54/2021 registered with Shahuwadi Police Station, Kolhapur for the offence punishable under Sections 353, 307, 333, 224 r/w. 34 of the Indian Penal Code, 1860.

02. Brief facts revealed from the copy of F.I.R. and arguments of learned advocates are as under:

On 03/03/2021 applicant and non applicant Alam who were arrested in CR No. 53/2021 were brought out of lockup in order to produce them before the Magistrate by the police personnel. In front of the gate of the Court non applicant Alam pretended about the pain in the chest. He took the stone and hit against the head of police head constable Wambale. Applicant and non applicant flee away from the custody of the police. Police caught non applicant Alam but applicant ran away, who was later on arrested by the police. Hence, police head constable Chintaman Wabale lodged the complaint.

03. Ld. Adv. Shri. Kakade for accused submitted that since 03/03/2021 applicant is in magistrate custody. The investigation is completed. There is no need of presency of applicant with police. The ingredients of Sec. 307 are not attracted. There are no papers on record which would shows

the criminal antecedents on applicant. The victim was discharged from hospital. As all the witnesses are police personnel, therefore, there is no question of tampering of evidence of prosecution witnesses. Applicant is permanent resident of Mumbai. Since last nine months applicant is in jail. No purpose would be served by keeping applicant behind bars. With these and other ground prayed to allow the bail application.

04. Learned A.P.P. Smt. P. J. Jadhav submitted that the offence is serious one. The applicant with a colusion of non applicant committed an offence and has trying to flee away from the custody of police. There are six crimes are pending against present applicant. If the applicant is released on bail, there is no possibility of presency of applicant in future. With these and other grounds prayed for the dismissal of the application.

05. On perusal of police papers, record and FIR, it appears that prima-facie there is strong case which shows involvement of present applicant in a serious crime. It prima-facie appears that applicant with collusion of non applicant in order to flee away from custody of police, cause assault on police and flee away. The charge-sheet, panchanama, statement of witnesses, prima-facie shows the involvement of the present applicant in the crime. The applicant is habitual offender and having criminal antecedent. If he released on bail, there is possibility of repetition of crime. The report of the police (Exh. 7) reflects that applicant is habitual offender. Crime has been

pending against him at Thane, CMM-Mumbai. Thus, if the applicant is released on bail, there is possibility of repetition of crime. Though the police personnel are the witnesses but considering the act of the applicant who dare to cause obstruction to the policeman while discharging their official duty, if applicant released on bail, certainly, it would send the wrong message to the society. There is possibility of repetition of crime and tampering with the evidence of prosecution. Considering act of applicant to assault on the police and flee away from their custody shows that there is no possibility of presency of accused in future, if he released on bail. Whether the ingredients of Sec. 307 of Indian Penal Code are attracted or not, is a question which required to be determine at the time of trial. Considering the background of criminal antecedent of various offences registered against the applicant in different police station, considering the involvement of the applicant in the present crime, the reflection of the release of accused on bail on the society and possibility of repetition of crime, applicant is not entitled to release on bail. Hence, the order.

ORDER

Application stands rejected.

Date – 25-02-2022.
Kolhapur.

(Mahesh Krishnaji Jadhav)
Additional Sessions Judge Kolhapur.