

MHKO010036062023



ORDER BELOW EXH.50 IN SESSIONS CASE NO. 216/2023

Ramu Mukund Kalkutgi .. Applicant/accused No.1

Vs.

State of Maharashtra .. Opponent

Through Rajarampuri P. S.

1. This is first bail application moved by the applicant/accused No.1 in C.R.No.348/2023 registered with Rajarampuri Police Station under Section 307, 323, 427, 504, 506 r.w. 34 of I. P. C and Section 5 and 27 of Indian Arms Act.

2. Facts of the case of prosecution are as under:-

There is a gang of Thugs in the area of Daulatnagar in Kolhapur and present applicant is leader of the said gang. On 4/7/2023, at 10.00 p.m, when informant Nilesh Jadhav was standing in front of Vijay Bakery, four persons came there on two motorcycles. They were damaging other vehicles as they approached the informant. Rama Kalgutaki was a pillion rider on one vehicle. He had prior enmity with the informant and therefore he injured the informant on his head with sword in his hands. Other accused assaulted the informant with fist blows and kicks. The informant was badly injured and was taken to the

hospital. He lodged FIR against all the accused at Rajarampuri police station on 5/7/2023 at 2.57 hrs.

3. It is stated by the applicant that, he has not committed any offence and there is no evidence against him. The FIR is afterthought and accused is falsely implicated in the crime. The investigation is complete and the charge sheet is filed. The other accused are released on bail. Present accused is behind bars since 5th July 2023. There is no progress in trial and even the charge is not framed. The applicant is only earning member of his family and is ready to abide all the conditions, if imposed.

4. Ld. Advocate for the applicant argued as per application and further stated that the investigation is complete and weapon is already recovered. He brought my attention towards injury certificate of Mr. Nilesh Jadhav which shows contused lacerated wound by hard and blunt object and argued that such injury cannot result due to use of sword. He argued that there is no intention to kill as only single injury was inflicted. He argued the bail on the ground of parity and stated that all criminal cases pending against him are lodged in the same police station and the applicant is falsely implicated. Ld. Advocate for the applicant relied upon case of **Mahadev Kundlik Vaidya & Ors Vs. State of Maharashtra, 2001, ALL MR(Cri)2147** and case of **Jadu Yadav**

Vs. State of Bihar, 1994, AIR (SC)957.

5. Ld. APP filed say at Exh.52 and contested the bail on the ground that the applicant has assaulted the informant on the head by using a sword. He had also threatened to kill the informant before inflicting serious injury. Therefore, ingredients of offence of attempt to murder are attracted. He argued as per grounds in say and stated that applicant is the main accused and the offence levelled against him is punishable with life imprisonment. He argued that eye witnesses have stated about his involvement. He relied upon a letter dated 26/09/2024 to highlight misbehavior and conduct of the present applicant in jail. He submitted that prosecution is ready to conduct the trial on day-to-day basis. He also argued that there is possibility that the applicant may pressurize other witnesses and considering his criminal antecedents, the witnesses will not depose in fear of injury.

6. Investigating officer filed his say at Exh.53 and contested the bail application. It is stated that the police have recovered a sword from accused No.1 i.e. present applicant. There are four criminal cases pending against present applicant i.e. C.R.No. 343/2022 in respect of section 323, 427, 504, 506, C.R.No.123/2021 in respect of Section 307, 323, 149 etc of IPC, C.R.No.116/2021 in respect of sections in Arms Act and C.R.No.348/2023 in respect of section 307,

323 of IPC. The record shows that applicant is habitual criminal.

7. I have anxiously considered rival submissions and have perused the charge sheet. In the FIR, there is specific allegation against the present applicant that he had prior enmity and he threatened to kill the informant and assaulted on his head with a sword. Assault was on the vital part of the body and using dangerous weapon. The police have recovered the sword from the accused No.1 i.e. present applicant. There are statements of eye witnesses showing that present applicant had a sword in his hand and he hit on the head of informant, therefore prima facie there is involvement of present applicant in commission of the crime.

8. Ld. Advocate for the applicant tried to argue on the basis of medical certificate of the informant which shows contused lacerated wound inflicted by hard and blunt object. He relied on the case of **Mahadev Kundlik Vaidya & Ors Vs. State of Maharashtra, 2001, ALL MR(Cri)2147**. In the said case, it was held that considering the allegation that injury was inflicted with an axe, there should have been incise wound. By observing this, Hon'ble Bombay High Court set aside the conviction of the accused. These observations were made after full-fledged trial. At present, it is difficult to ascertain whether contused lacerated wound is possible with

sword or in all cases the sword will inflict a cut injury. Therefore, this citation will not apply to the present set of facts.

9. In another case **i.e. Jadu Yadav Vs. State of Bihar, 1994, AIR (SC)957**, it was held that accused persons were having lathis' and seven out of nine injuries were incised wounds which would have been caused by sharp cutting weapon. By observing that Hon'ble Supreme Court gave benefit of doubt to accused Nos. 1 to 3 and confirmed the conviction of accused Nos.4 to 6. In present case, there is prima facie evidence against the present applicant, who was carrying sword in his hand. Photograph of the sword shows that the sword was rusted and was not sharp. Therefore, there is possibility that it might cause contused lacerated wound.

10. The prosecution has shown willingness to conduct the trial on daily basis. Prima facie, there is involvement of present applicant in an offence which is punishable with life imprisonment. There are criminal antecedents against present applicant and if he is released on bail, he may tamper with the evidence. The letter dated 26/09/2024 written by jailor shows that present applicant abused the another inmate and also threw stone on him due to which there was chaos in the jail. Hence, considering the role attributed to present

applicant, gravity of the offence and conduct of the present applicant, I am not inclined to release him on bail. Hence, following order is passed :-

ORDER

Bail application is rejected.

Kolhapur.

Date : 03/12/2024

(Aparna S. Waikar)

Additional Sessions Judge,
Kolhapur.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Mrs.S.R.Tambvekar
Name of Court	Mrs. Aparna S. Waikar, Additional Sessions Judge, Kolhapur.
Date of Dictation	03/12/2024.
Order signed by the P.O. on	03/12/2024.
Order uploaded on	03/12/2024.