



**SESSIONS CASE NO.131/2022**  
**State V/s. Dadamiya & others.**

**ORDER ON EXH.8**

**Application under Section 439 of the Criminal Procedure Code.**

The accused arrested in Crime No.169/2022 for the offences punishable under Sections 307, 341, 504 read with 34 of the I.P.C.

**Facts of the matter in brief are as below.**

2. On 17-5-2022 the informant from the Intensive Care Unit of Sahayadri Hospital registered a report alleging that three months ago the accused had quarrel with his younger brother Mohammad and after giving information about it to father of the accused the quarrel was settled. Later, on 17-5-2022 at around 5:00 P.M. accused again quarreled with younger brother and during intervention slapped his father, at that time accused drove the knife with an intent to assault his father but the people from the vicinity intervened. Further, at around 6:00 P.M. accused restrained him in the road in meantime father of the present accused Samir Kureshi arrived at the spot and abused him. During that time accused threatened to cut him into pieces like animal and drove a knife wrapped to his waist and stabbed him in the stomach with intent to kill him causing grievous injury. Thereafter both accused fled and he was transported to the hospital for medical treatment.

3. Based upon the report Police registered instant crime and commenced investigation. In course on 18-5-2022 Police arrested accused and since 19-5-2022 he is in the jail. After

completing investigation the Investigation Officer submitted final report against accused.

4. The accused submits that he is innocent and falsely implicated by informant from the rival group. He further submits that the investigation is complete and the charge sheet has been filed. Also, he is permanent resident of village without any criminal antecedent therefore needs to be released on bail. He undertakes to abide by the conditions.

5. The Ld.A.P.P. has opposed the application contending that the offence is serious and there is strong possibility of commission of more serious offence by accused if released on bail. Further, he contends that the accused and the informant are neighbours therefore, there is strong possibility of escalation of enmity hence the application needs to be rejected.

6. The Ld.Advocate for the accused contends that the allegations are false levelled due to previous enmity between the parties. Emphasizing on the delay the Ld.Advocate submits that the set of facts alleged by the prosecution is not believable and the delay of five hours in registration of F.I.R. in these circumstances is not justified. Further he submits that the accused No.2 has been released on anticipatory bail by the Hon'ble High Court therefore the accused deserves parity and should be released on bail.

7. To the contrary, the Ld.A.P.P. contends that the allegations levelled against accused are well founded. The informant has levelled direct allegations against accused and the witnesses have supported the prosecution. Further, he submits that

the role of present accused is different from the other accused therefore he is not entitled to the parity and release on bail.

8. The record reveals that at the time of registration of report i.e. on 17-5-2022 the informant was under medical treatment as an indoor patient in Sahayadri Hospital. He has levelled direct allegations of stabbing against present accused. The informant in the report itself has stated two alleged incident prior to his stabbing wherein he alleged that the accused had quarrel with his younger brother and one occasion accused slapped his father and tried to assault him by knife. Thus, at this juncture it appears that according to the informant on three consecutive occasions the accused had quarrel with his family members and on earlier occasion accused tried to assault his father by knife.

9. The Investigation Officer has recorded statements of witnesses to alleged incident. The younger brother Mohammad Sayyad of the informant has stated in his statement that approximately three months ago he had quarrel with Dadamiya and at that time the informant informed to the father of accused about the incident and thereafter the quarrel was settled. At that time the accused has threatened them of consequences. Another witness Afroz has stated that the accused stabbed the informant in his presence and he tried to intervene the scuffle and after alleged assault took the informant to the hospital. Similarly, witnesses Sagar and Ajaj too mentions that the accused stabbed the informant in their presence. Importantly, the witness Ajaj is a neighbouring shop owner of the accused.

10. The medical injury certificate issued by Sahayadri

Accident and Neuro Care Centre, Latur shows that the informant suffered a stab wound on abdomen admeasuring 2X4X1 c.m. caused by use of sharp and hard object. The report discloses that maximum depth of the injury from the skin surface is 4.5 c.m. The medical certificate clearly shows that the informant has suffered a grievous injury to his vital organ.

11. The record available at this point in time tends towards the guilt of accused. The facts alleged by the informant apparently show that the accused was having reason for the assault.

12. The Ld.Advocate for accused has relied on the judgment of Hon'ble Supreme Court in **Prabhakar Tiwari V/s. State of U.P. and another, Criminal Appeal No.153/2020.** Emphasizing the judgment the Ld.Advocate submits that the gravity and seriousness of the offence and pending several criminal cases against accused in themselves cannot be factors or basis for refusal for prayer for bail. He has further relied on the judgment of Hon'ble Apex Court in **Arnab Manoranjan Goswami V/s. State of Maharashtra and others in Criminal Appeal No.742/2020.** Emphasizing the liberty of the accused he submits that the basic rule of our criminal justice system is ' bail, not jail' and submits that unless the accused is found guilty he need not be restrained in jail therefore should be released.

13. The facts on record strongly implicate accused in the crime. The contents of F.I.R. coupled with the statements of witnesses tend to show complicity of accused in stabbing the informant. Further, it appears that accused was having reason to cause hurt to the informant. Allegedly accused had threatened the

informant and his brother with the consequences on earlier occasion during the quarrel. The witnesses are apparently independent and one of them is a neighbouring shop owner. The witnesses have apparently directly witnessed alleged incident. The medical certificate shows that the informant suffered from grievous injury to his vital part that may have caused his death. Alleged incident was not a sole incident but was consequences of couple of earlier quarrels between the brother of informant and the accused. Though the investigation is complete and a final report has been submitted against accused but considering the antecedents of the present crime there is strong possibility that accused may indulge in similar and more grievous offence if released on bail at this point in time. Thus, the accused does not deserve to be released on bail. Hence, the order.

**Order.**

The application is rejected.

Jagdish M. Dalvi,  
Additional Sessions Judge,  
Latur.

Date:19-09-2022.

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