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IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BARAMATI.

Cri. Bail Appln. No. 08/2019.

MHPU14-000162-2019.

The State of Maharashtra

Versus

Ganesh Kondiba Thombare & ors.

COMMON ORDER BELOW EXHIBIT 10 AND 12

These applications are filed by the applicants for grant of regular bail under Section 439 of Cr.P.C. in Crime No. 455/2018 under Sections 307, 324, 342, 504, 506 r/w. S. 34 of Indian Penal Code, registered with Baramati Taluka police station.

2] The accused have stated that they are falsely implicated in crime. There is no motive to commit the crime. The FIR is filed belatedly. The injuries sustained to the victim on his head are not of such nature that could be caused by hitting a stone. No purpose would be served to keep the accused behind bar. The investigation is over and charge-sheet is filed. Also, the accused relied on the case of **(1)Vaman Narain Ghiya V/s. State of Rajasthan, MANU/SC/8394/2005,** on the count that liberty of the citizen of India is important and under the right of police to investigate the case, the liberty should not be curtailed. Also, relied on the count that the object of bail is neither punitive nor preventive. Detention in custody can cause great hardship. Only in extra ordinary circumstances the liberty of the accused should be curtailed. Also, on the count that unless guilt is proved the accused is said to be innocent and grant of bail is a general rule and putting a person in jail is an exception.

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3] The applicants submitted that the victim is a habitual offender and several cases are pending against him and he has conflict with many other people and their name is entangled only on the basis of suspicion. There is discrepancy in the statements of the witnesses. The evidence on record is also inconsistent. There is no prima facie case against them. They are in jail from past five months and their family is totally dependent on them. They are permanent resident of the village Malegaon Bdk., having landed property and household property. So, they will not abscond if released on bail. They are ready to furnish surety and on suitable terms and conditions and they be released on bail.

4] The Investigating officer filed say through ld. A.P.P. The I. O. has filed supplementary documents regarding the health condition of the injured Rajesh Khomane. Also, the complainant appeared through Advocate Vaibhav Bhosale. The complainant filed affidavit in order to assist the prosecution. Their contention is that the accused Nos. 1 to 4 in furtherance of their common intention, on the count of previous enmity, the accused Nos. 1 to 3 by means of scythe caused grievous injuries on several parts of his body. His fingers of hand were cut by scythe. Also, they have caused grievous injuries to his hands and one of his hand, is not functioning. The present accused by means of a big stone assaulted on the head of Rajesh. Severe and life threatening injuries were caused to him. On 01.9.2018 till date medical treatment is going on him. He is in coma and unable to talk. He is fighting with his life in order to survive. The attack was brutal. Around 90 stitches were given on his head. Major surgeries were performed on his person. Rajesh was bleeding and the incident has been seen by the complainant, who is a father of Rajesh. Also, they have submitted that the accused, if released on bail, they will commit more serious offence against the injured as well as the witnesses. Hence, they have submitted that looking to the gravity of offence and the deteriorating health condition of the injured, bail to such accused shall not be given.

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5] Heard both the parties Counsel at length. The ld. Counsel for the accused Adv. Pataskar has argued as per the contentions raised above. He argued that the incident is improbable. The CDR filed by the police shows that the complainant has not contacted his son during the relevant time of incident, as stated in the FIR. There is no specification as to who, when and where caused assault by way of scythe to the injured. The conduct of the complainant and the prosecution witnesses on the spot is doubtful. There is no independent witness to the incident. There is no blood stain on the scythe recovered. There is no description of motorcycle of the complainant and the injured. The FIR is belatedly filed. The accused was arrested at 8.00 pm, but prior to that his clothes were seized. About the injuries sustained to the injured i.e. his finger is cut is not mentioned in the FIR. The police has not seized the fingers. The story of the prosecution is improbable. Overall, he has prayed for bail of the applicants.

6] The ld. A.P.P. argued as per the say given by the prosecution and vehemently opposed the bail application.

7] I have gone through the record. It appears to Court that prima facie case is made out against all the accused including the present accused under the aforesaidly mentioned sections. It appears to the Court that in furtherance of their common intention and in order to take revenge, the accused Nos. 1 to 4 by means of deadly weapon caused life threatening injuries to the injured Rajesh Khomane. There are eye witnesses to the incident including the father of injured. The Medical Report shows that the fingers of injured were cut by the accused Nos. 1 to 3 by way of scythe. Also, one of the arm of the injured is not functioning. There is severe injury on his head. The injuries on the person of injured correspondence to the act of assault of accused. The Injury Certificate of K.E.M. hospital shows four life threatening grievous injuries to the injured. One of the injury is on parietal temporal region. The said injury appears to be life threatening. Also, it appears that the

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present accused by means of scythe caused grievous injuries on the person of injured. They have cut the fingers of the injured. Also, it appears that from dt. 01.9.2018 till date he is not in a position to give statement and is in coma. There are dense chances that the present offence could be converted into severe and graver offence. It also appears to the Court that the offence is very serious and the punishment is up to life imprisonment.

8] The arguments advanced by the ld. Counsel for accused that the contentions raised by him are on merits of the case. At the stage of deciding the bail application, it is not expected that the Court should go into the merits of the case. The Court has to see that where the offence is prima facie made out against all the accused. The same appears to be made out against all the accused.

9] No doubt, the investigation is completed and charge-sheet is filed. But, looking to the alleged act of accused it appears to the Court that if they are released on bail, then they may tamper the prosecution evidence, may threaten the prosecution witnesses, may commit severe offence etc. It also appears to the Court that if such accused are released on bail, then wrong message will be sent in the society. The cited case law is not applicable to facts and circumstances of this case. Looking to the deteriorating health condition of the injured, due to the alleged act of accused and looking to the fact it may convert more graver offence, bail to such accused is not warranted. Hence, the following order.

ORDER

Applications Exhs. 10 and 12 are rejected.

Sd/-

Baramati.
Dated :13.03.2019.

[R.R.Rathi]
Additional Sessions Judge,
Baramati.

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C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment are same word for word as per original judgment.

Name of Steno : Mrs. Arya Nikam (Stenographer G-1)

Court Name : Shri. R.R.Rathi,
Addl. Sessions Judge, Baramati.

Date : 13.03.2019.

Judgment signed by P.O. On : 13.03.2019.

Judgment uploaded on : 13.03.2019.