

1 Bail application No.173/2023

**Sanjay + 2 Vs State
CNR No. MHBU20000511-2023**

**Order Below Exh.1
Dt.12.09.2023**

1. Accused seeking release on bail under section 439 of Code of Criminal Procedure.

2. Brief facts for the purpose of present application are as under :-

On the basis of statement-cum-report of informant Yogesh Vithoba Jaybhaye Crime No. 134/2023 is registered with police station, Bibi against co-accused. During investigation, involvement of applicants/accused revealed thereby they came to be arrested. According to applicants/accused they are not named in F.I.R., no allegations are levelled against them. Applicants/accused are innocent, they are falsely implicated in the present crime. No criminal antecedents are marked against them. It is submitted that, applicants/accused are arrested on 02-09-2023 and now they are in M.C.R. Nothing remained to be seized from the applicants/accused. They are ready to abide by the conditions imposed by the court in case they are released on bail. Hence, prayed to release them on bail.

3. Prosecution by filing say at Exh.5 objected the application. Learned A.P.P. and investigating officer relying on F.I.R. and investigation papers, submitted that, offence is

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serious in nature. Injured informant and witnesses are sustained grievous injuries in the incident and still they are under the treatment. It is further submitted that, co-accused are yet to be arrested. Investigation is at initial stage. It is also submitted that, if the applicants/accused released on bail, there is possibility of tampering with the prosecution evidence. Hence, prayed to reject the bail application.

4. I have heard rival submissions. Perused case diary/investigation papers produced for perusal by prosecution.

5. Prosecution's case in short as per F.I.R. is as under :-

Informant is resident of village Chor-Pangra and advocate by profession. There is Group Gram Panchayat of village Chor-Pangra and Gowardhan Nagar. In the election, Savitribai Shivaji Rathod elected as Sarpanch. Prior to incident rumor was spread in the villages that, informant has made complaint regarding the illegal affairs of Group Gram Panchayat. On 26-07-2023 at about 3-30 to 4-00 p.m. accused Milan Chavan and Pravin Rathod made a phone call to informant and stated informant not to poke nose in the affairs of Gram Panchayat. After some time, when informant and his father were sat in their shop, accused Pravin along with a mob of 70 to 80 persons reached to the house of informant and started committing attack on informant and his father. Accused Pravin assaulted informant by iron rod on his head, back, and

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thigh. Accused Milan attempted to give blow of Axe on the person of informant, but informant saved himself from that blow. Accused Shivaji also assaulted informant by iron rod on his back and leg. When father of informant attempted to rescue informant, accused Pravin, Milan, Prabhu assaulted on the left hand of father of informant by iron rod and sticks. Thereafter, accused Pravin, Milan, Shivaji and others entered into the house of informant and started assaulting wife of informant by slap, fist blows and kick blows, thereby wife of informant went in kitchen, accused Pravin, Milan and Shivaji also went in the kitchen and forcibly snatched mobile of wife of informant. Accused Shivaji assaulted on the right hand of wife of informant with stick, so also, pushed wife of informant on the wall. In order to save himself from accused persons, informant started running, however, beside the statute of Dr. Babasaheb Ambedkar, accused Shamrao, Shantaram, Ravi, Tukaram, Aakash caught hold informant and beat him with sticks, accused Avi and Mili also reached there and they also beat informant by sticks. When informant succeeded to rescue from them and went to the side, accused Prabhu pelted a iron rod towards informant, due to which informant fell down, that time accused Barkya assaulted informant by stick. Thereafter, informant ran away towards his house. However, accused persons were also proceeding towards the house of informant for beating. At that time, Suresh Ingle, Kailas Jaybhaye Tushar Jaybhaye and Vinod Ingle put informant and his family

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members into the house and lock the door. Thereafter, wife of informant made phone call to police. After some time, police reached to the house of informant and took informant and injured to Rural Hospital Bibi. From Rural Hospital Bibi, informant and injured were taken to M.G.M. Hospital, Aurangabad.

6. It is submitted by the learned counsel for the applicants/accused that, applicants/accused are not named in F.I.R., so also no specific allegations are levelled against applicants/accused. Applicants/accused were not involved in the incident. Hence, prayed to release applicants/accused on bail.

7. Perusal of case papers as well as injury certificates show that, informant sustained nasal bone fracture as well as head injury in the incident. So also, father of informant also sustained two fracture injuries to his hand and he was operated for the same. The weapons alleged to have been used in the commission of offence are iron rods, Axe and sticks. Thus, both these injured sustained grievous injuries in the incident.

8. Incident is of dated 26-07-2023. During pendency of the earlier bail application of co-accused, investigating officer was directed to submit the medical condition of injured persons. Accordingly, investigating officer included medical certificate

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dated 09-08-2023 issued by Ojas Hospital, Jalna in investigation papers. It show that, MRI of Yogesh show sub-acute sub-dural haemorrhage and he needs more hospitalization for recovery.

9. During pendency of present application, investigating officer submitted medical certificates issued by Ojas Hospital Jalna in respect of the injured persons. Medical certificate in respect of injured Vithoba shows that, Vithoba was discharged from the hospital on 14-08-2023. Medical certificate in respect of injured Yogesh show that, recently injured Yogesh having C/o Multiple joint pain with shoulder pain as well as knee stiffness, difficulty in walking and for that physiotherapy session is going on and few more days needs for recovery and physiotherapy. Thus, from the medical certificates of the injured persons, it is clear that, injured Vithoba is discharged from the hospital, so also, the condition of injured Yogesh is out of danger and now he needs only physiotherapy treatment for recovery. Thus, it is clear that, now there is no possibility of escalation of offence.

10. Perusal of statement of injured Yogesh and Vithoba as well as contents of F.I.R. show that, name of applicants/accused is not mentioned in F.I.R. So, also statements of injured persons did not disclose that, any active part is played by the applicants/accused in the present crime. So, from the perusal of case papers, prima facie no allegations

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are levelled against applicants/accused, which specifically connect applicants/accused with the grievous injuries sustained by informant Yogesh and Vithoba. Weapons used in the commission of offence are already seized. Applicants/accused are arrested on 02-09-2023. Now, they are in M.C.R. Nothing remained to be seized from applicants/accused. Therefore, further custody of applicants/accused is not necessary. No purpose would be served by keeping the applicants/accused behind bar. The apprehension of prosecution can be safeguarded by imposing stringent conditions while releasing applicants/accused on bail. Hence, I am of the view that, applicants/accused are entitled to be released on bail with conditions. Hence, the order.

ORDER

- 1) The application is allowed.
- 2) Applicants / accused Sanjay Kanhiram Rathod, Ram @ Dnyaneshwar Sanjay Rathod and Gajanan Baddhu Pawar be released on furnishing PB & SB of Rs.30,000/- (Rs. Thirty thousand only) each with one or more solvent sureties in the like amount for the offences punishable under Sections 307, 395, 452, 326, 324, 323, 143, 147, 148, 149, 504, 506, 120(B) of Indian Penal Code in Crime No. 134/2023 registered at Police Station Bibi on the following conditions :

- (a) The applicants/accused shall remain present in concerned police station as and when called by the

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investigating officer on written intimation till filing of the charge-sheet.

(b) The applicants/accused shall co-operate with the investigation.

(c) The applicants/accused shall not tamper with the prosecution evidence.

(d) Applicants/accused shall not enter in village Chor-Pangra Tq. Lonar , Dist. Buldana till filing of charge-sheet.

(e) Applicants/accused shall not influence or threaten to prosecution witnesses.

4. Breach of any condition may lead to cancellation of bail.

5. Bail before learned J.M.F.C.

Dt.12.09.2023

(S.M.Chandgade)
Additional Sessions Judge
Mehkar Dist.Buldana