

ORDER BELOW EXH.46 BAIL APPLICATION
in Sessions Case No.01/2018.

1. The application is received from the DLSA, Osmanabad, which is received by DLSA, Osmanabad from jail for release as per the direction of Hon'ble Supreme Court in SMW(C)No.1/2020 for release.

2. Read application.

3. The APP appeared and resisted the application by filing say at Ex.47, objecting the application on the ground that offence is serious in nature. The previous bail application is rejected on merit the case is part heard based on direct evidence. The applicant is not entitled for benefit as claimed. There is possibility of tampering witnesses and evidence and prayed to reject the application.

4. Following points arise for determination. My findings thereon is as under:

POINT	FINDING.
1. Whether applicant made out case to allow the application?	-- No.
2. What order?	...application is rejected.

REASONS

POINT NO.1,2:-

5. The advocate for the applicant argued that the directions of Hon'ble Supreme Court in SMW(C) No.1/2020 are applicable to the present facts and circumstances. As per the High Power Committee decision dated 12-5-2020 for release the accused are

applicable. The applicant's case is within four corners of the said decision. The applicant may be released on interim bail. He is ready to obey the terms and conditions imposed by the Court.

6. The APP argued that the offence leveled against the applicant is serious in nature. The clause (iv) to (x) dated 25-3-2020 are applicable. It is necessary to consider severity of offence. The applicant is not entitled for bail.

7. The bail application No.48/2020 filed by the accused / applicant as per directions of Hon'ble Supreme Court in SMW(C) No.1/2020 is rejected by this court on 28-05-2020 by passing detailed order.

8. The complaint Panchappa Laxman Lamjane lodged information alleging that on 5-7-2013 he along with brother Mahadeo villager Sidheshwar Lokhande, Ulappa Birajdar, Baburwan Hendre and others were in front of Hanumant Temple at about 8.00 p.m. The accused came with axe and abusing to Mahadeo saying that when he was in jail, his friend Santosh Maruti Lamjane developed illicit relations with his wife and why he is keeping relations with him and assaulted on head by axe, due to which he sustained grievous injury. Sidheshwar Lokhande caught hold him from back side and taken away the axe. The crime was registered vide Cr. No.307,504 of I.P.C.

9. I have framed charge against the accused for the offence punishable U/Sec. 307,504 of the I.P.C.

10. The prosecution examined five witnesses and case is fixed for further evidence.

11. I have gone through corrigendum dated 18th May 2020 to minutes of meeting of High Power Committee dated 11th May-2020.

12. I have gone through the observations of Hon'ble High Court of Judicature at Bombay Criminal Appellate Jurisdiction in LD VC BAIL APPLICATION No. 49 of 2020 Mahesh B. Patil-vs State of Maharashtra with LD VC INTERIM APPLICATION NO. 70 OF 2020 in Shri Kunal Dinkar Patil -vs- State of Maharashtra, wherein para No.6. However the guidelines read as follows:

“It is clarified that rest of clauses (iv) to (x) of the decision dated 25-3-2020 of this Committee shall apply and shall form the part of the present decision”.

7. In view of this, it would be necessary to read the guidelines dated 25-3-2020. The guidelines of 25-3-2020 read as follows:

“ The prisoners who fall in the clause or the category spelt out by this decision will be entitled to be released in accordance with law in considering every case for such reliefs, the nature of the offence and severity of the offence shall be considered. The possibility of the prisoner committing offence in case of temporary reliefs (such as habitual offenders or likelihood of his/her absconding shall be also be considered as important tests to decline such request for temporary release.”

12. Hence, in view of the guidelines dated 25-3-2020 the applicant cannot claim benefit by the guidelines dated 14-5-2020. It would be necessary to also take into consideration the merits of the matter, the gravity of the offence and the attitude

of the accused of indulging into criminal activities despite preventive measures, the applicant cannot take benefit of the circular dated 14-4-2020 and does not deserve temporary bail, Hence, the application stands rejected”.

13. The advocate for the applicants argued that the above observations are applicable to the habitual offenders and not applicable to the present facts and circumstances. If the guidelines of the High Power Committee coupled with the above observations para No.12 taken into consideration I come to the conclusion that the above observations are applicable to the present facts and circumstances. From the above discussion I come to the conclusion that offence is serious in nature hence applicant is not entitled for bail as prayed.

14. The information about the capacity of prison and present number of prisoners in jail called from Superintendent, Osmanabad prison. As per the reply letter and telephonic message at present 275 prisoners are in the jail out of them 23 prisoners are quarantine at temporary prison situated at Boys hostel, for District Army persons, Khaja nagar, Osmanabad. The jail is not overcrowded and on that count applicant is not entitled for bail. The letter of superintendent discloses that for the covid 19 positive prisoners the building of boys hostel for District Army persons, Khaja nagar, Osmanabad is converted into jail. The regular checkup of the prisoners is conducted. The necessary precautions are taken to avoid infection of covid 19 virus.

15. In the present facts and circumstances, taking into consideration gravity of the offence, there is possibility of

tampering witnesses. I come to conclusion that the applicant is not entitled for bail as prayed. I pass following order.

ORDER

1. The application Ex. 46 in Sessions Case No.01/2018 is hereby rejected.
2. Inform to the accused through jail authority, Osmanabad.

13 /5/2021

Sd/-
(Shrikant B. Salunkhe)
Addl Sessions Judge, Omerga.

CERTIFICATE

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

Name of Stenographer		C.P.Patil
Court		Shri.S.B.Salunkhe, Addl.Sessions Judge,Omerga
Date		13-05-2021
Order signed by the Presiding officer on		13-05-2021
Order uploaded on	...	13-05-2021