

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3061 OF 2015

Vishwanath s/o Ratnakarappa Khurpe **APPLICANT**

V E R S U S

The State of Maharashtra & Anr. **RESPONDENTS**

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Mr. S.J.Salunke, Advocate for Applicant.

Mrs. Pratibha Bharad, A.P.P. for R.No.1– State.

Mr. S.A.Wakure, Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 1st JULY, 2015

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PER COURT :

1. This is an application for grant of anticipatory bail since the applicant is apprehending his arrest in connection with Crime No. 66/2015 registered with police station Majalgaon [Rural], Dist. Beed for the offence punishable u/s 395 of the Indian Penal Code.

2. Heard Mr. S.J.Salunke, learned counsel for the applicant, Mrs. Pratibha Bharad, learned A.P.P. for respondent No. 1 – State and Mr. S.A.Wakure, learned counsel for the first informant in extenso.

3. F.I.R. is lodged by Deepak Mohanlal Agrawal.

According to the F.I.R., when first informant was returning to Beed from Majalgaon, his car was intercepted near one Reliance petrol pump by two motorcyclists. That time, chilly powder was thrown in his eyes, resulting into stopping of the car. That time, according to F.I.R., Shaikh Majhar Shaikh Khairoddin and Shaikh Hyder along with others brutally assaulted first informant and his golden chain was snatched away, also his two cell phones were taken away.

4. When present application was taken up for hearing on 17/06/2015, it was pointed out to this Court by the present applicant that it is the present applicant who has taken the first informant to the hospital from the spot. On that count, interim bail was granted in favour of the present applicant on 17/06/2015.

5. Today, when the matter was taken up for final hearing, learned counsel for the first informant has supported the contention of the present applicant that it is the present applicant who has removed the first informant to the hospital. Even this fact is also not disputed by the Investigating Officer in his reply. If the present applicant was one of the assailants, then his name would have find place in the F.I.R., since first informant was knowing the present applicant. In the F.I.R., name of the present applicant is not taken either as assailants or the person who has taken away the valuable of the first informant.

6. Further, in the entire reply of the Investigating

Officer, there is no material sought to be press into service against the applicant to oppose the bail application, except according to the Investigating Officer, one of the co-accused who is arrested, has stated to the Investigating Officer that present applicant is one of the assailants. Statement of the co-accused is not admissible in evidence. Therefore, on the basis of inadmissible piece of evidence, Investigating Officer wants the custody of the present applicant.

7. Looking to the fact that it is the present applicant who has taken away first informant to the hospital, further his name is not appearing in the F.I.R. nor any role is ascribed to him and that there is no admissible evidence against the present applicant, present Criminal Application needs to be allowed and it is accordingly allowed. Interim order passed by this Court on 17/06/2015 stands confirmed.

8. Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]