

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

Criminal Application No. 5405 of 2016

District : Dhule

Anup Chintaman Zalte,
Age : 27 years,
Occupation : Service,
R/at Deopur Church Compound,
Wadibhokar Road, Deopur,
Dhule.

.. Applicant.

versus

The State of Maharashtra
(At the instance of the P.I. -
Deopur Police Station,
District : Dhule).

.. Respondent.

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*Mr. Aniket U. Nikam, Advocate, with
Mr. Aashish I. Satpute, Advocate, for the applicant.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 10TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 44/2015 registered with Deopur Police Station, District Dhule, for offences punishable under Sections 307, 326, 323, 341, 504, 506 of the Indian Penal Code and under Section 4/25 of the Arms Act, by this

application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that there is delay in lodging the FIR. It is further argued that the injuries suffered by the victim is not corresponding to the weapon attributed to the applicant. The learned Counsel further argued that there is cross FIR in respect of the same incident. My attention is also drawn to several documents showing that the present applicant had also suffered injuries in the alleged incident. The learned Counsel further drew my attention to some FIRs registered against the informant in order to show that the informant has criminal antecedents. It is further argued that the applicant is serving as a public servant and though the incident took place allegedly on 06.05.2015, till date, he is not arrested by the Police. The learned Counsel relied on order of the learned Single Judge of this Court [Coram : Abhay M. Thipsay, J.], dated 13th October 2015, in Anticipatory Bail Application No. 1517 of 2014 (***Rakesh Brijlal Jain Vs. The State of Maharashtra***), in order to support his contention that when the Police did not arrest the accused for sufficiently long time, he becomes entitled for anticipatory bail.

3. The learned Addl. Public Prosecutor opposed the application by contending that the applicant is

not entitled for pre-arrest in view of withdrawal and rejection of earlier two applications for the same relief.

4. Perused the record made available with the present application. This is third anticipatory bail application of the applicant. The applicant had earlier moved for the same relief vide Criminal Application No. 3045 of 2015 and the said Application was withdrawn on 29th June 2015 and accordingly the same was dismissed. Thereafter, the present applicant again approached this Court for seeking anticipatory bail by filing Criminal Application No. 4514 of 2015. After hearing the learned Counsel for the applicant, this Court was pleased to reject that application on 26th August 2015. Entertainement of the instant application after rejection of second application of the present applicant for similar relief will amount to review of the order passed by other learned Judges of this Court. This course is not permissible.

5. Even otherwise present application is not maintainable in view of the judgment of Full Bench of Rajasthan High Court (Jaipur Bench) in the case of **Ganesh Raj Vs. State of Rajasthan & others** [2005 Cri.L.J. 2086]. Relying on the judgment of the Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav** [AIR 2005 SC 92], has held that

second or subsequent bail application under Section 438 of the Cr.P.C. can be filed if there is change in fact situation or in law which requires that the earlier view being interfered with or where the earlier findings have become obsolete. This is the limited area in which accused who has been denied bail earlier can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground, such as new circumstances, further development, different considerations, some more details, new documents or illness of the accused, etc. In this view of the matter, the present application cannot be validly entertained.

6. Reliance placed by the learned Counsel appearing for the applicant, on order of the learned Addl. Sessions Judge, Dhule, dated 20.05.2015, whereby the co-accused is granted anticipatory bail, is totally misconceived because subsequently on 29.06.2015, the application claiming anticipatory bail moved by the applicant was withdrawn. There are no change in fact situation or circumstances. Some documents are annexed with the application to show that the applicant is ill. However, perusal of those applications shows that the applicant had reported to the hospital that he do not feel fresh. This cannot be a change in circumstances. Merely because the accused was not arrested by Police, he does not

become *ipso facto* entitled for anticipatory bail, particularly when his earlier applications for anticipatory bail have been either withdrawn or rejected. Some more is required to be shown. In such situation, it is incumbent on the part of the applicant to show that he has participated in the investigation by approaching the investigator and still the investigator has declined to arrest him. This is not so in the instant case.

7. Even otherwise on merit, there is no case for anticipatory bail. The report lodged by the informant categorically shows that the applicant had assaulted him by means of a sword. In case of difference between the medical evidence and ocular evidence, it is well settled that the ocular evidence shall always prevail. In such situation, I do not find any substance in the argument of the learned Counsel for the applicant, that the injury suffered by the informant is not corresponding with the weapon used.

8. In the result, the Application fails and the same is accordingly rejected.

(A.M. BADAR)
JUDGE

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