

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.738 OF 2020

Sk. Ijaz s/o Sk. Abbas,
Age 28 years, Occupation Agriculture,
R/o Mudhegaon Tq. Ghansavangi
Dist. Jalna.

...Applicant

VERSUS

The State of Maharashtra.

...Respondent

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Advocate for Applicant : Mr. S. G. Ladda.
APP for Respondent : Mr. A. M Phule.
Advocate for original informant : Mr. D. M. Wagh.

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**WITH
CRIMINAL APPLICATION NO. 1589 OF 2020**

Shaikh Sikandar s/o Shaikh Rasool,
Age Major, Occupation Agriculture,
R/o Mudhegaon Tq. Ghansawangi
Dist. Jalna.

...Applicant

VERSUS

- 1) The State of Maharashtra.
- 2) Shaikh Ijaz s/o Shaikh Abbas,
Age Major, Occupation Farmer,
R/o Mudhegaon Tq. Ghansavangi
Dist. Jalna.

...Respondents

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Advocate for Applicant : Mr. D. M Wagh.
APP for Respondent No.1 : Mr. A. M Phule.
Advocate for Respondent No.2 : Mr. S. G. Ladda.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 16-10-2020.

ORDER :

- 1) Criminal Application No.1589 of 2020 is filed by informant to assist learned Additional Public Prosecutor in opposing Anticipatory Bail Application No.738 of 2020. It is allowed and disposed of.
- 2) Applicant in Anticipatory Bail Application No.738 of 2020 is apprehending his arrest in connection with Crime No.340 of 2020, registered with Police Station Ambad Dist. Jalna, for the offences punishable under Section 143, 147, 148, 149, 323, 326, 427, 504 and 506 of the Indian Penal Code.
- 3) Head learned Advocate for the applicant Mr. S. G. Ladda, learned Advocate Mr. D. M. Wagh for original informant, and learned Additional Public Prosecutor Mr. A. M. Phule for respondent- State
- 4) It has been vehemently submitted on behalf of the applicant that, the applicant is innocent and has been falsely roped in the present crime. The true facts have been suppressed. The contents of the First Information Report have been given that, when the informant was inspecting and protecting his crop in his field at

Mudegaon Tq. Ghansavangi Dist. Jalna on 06-07-2020, he noticed that five accused persons including the present applicant were cutting a Sweet Lime tree which was about ten to twelve years old. Though he had given call to the accused persons yet he could not dare to go near them as they were holding axe. But then the informant does not say that, he had lodged any report on that day itself but he had taken rest at his home. On the next day he informed the said fact to his elder brother and, thereafter, when he was standing near school, all the accused persons came, abused him and assaulted him. The fact is that, the informant had abused the wife of the applicant in filthy language and had extended indecent gestures. The said incident had occurred at about half kilometer away from the place of occurrence now shown. While running away under the fear that people would assault him, the informant sustained injury only to one leg. The applicant and his wife did not lodge any report with the police just to avoid their defamation by people. There is delay of about three days in lodging the present report against the applicant. The investigation is practically complete and the physical custody of applicant is not at all required.

5) The learned Additional Public Prosecutor strongly opposed the

application and submitted that, the custody is required to recover the weapon used in the commission of the crime by the present applicant.

6) An accused may have a defence but when it is built on a story then it is for the accused to prove it at the time of trial. Unless there is something corroborating, such defence cannot be looked into at the time of considering his bail application. We will have to go by the record as on today. In this case, the First Information Report has been lodged by one Shaikh Mukhtar Shaikh Rasool stating that, on 06-07-2020 he had found the five accused persons including the present applicant cutting his Sweet Lime tree, but then he says that, he had not taken any action. On the second day he had informed said fact to his brother. His brother responded that, they would call some people from the village and then try to solve the problem. Thereafter, the informant was standing in front of school where all the accused persons came. It is alleged that, the informant was assaulted by iron rod, wooden stick. The weapon used by the present applicant is said to be iron rod. According to the informant because of the assault by the present applicant and one Shaikh Nasim Shaikh Dada, his left leg has been fractured.

Though it is a fact that there is a delay in lodging the First Information Report, it has been tried to be explained by the informant that since he was admitted in civil hospital, he could not lodge the report earlier. Now only on the basis of delay we cannot infer at this stage that the accused is falsely implicated. The offence under Section 326 of the Indian Penal Code has been registered and the weapon allegedly used by the present applicant in the commission of the crime is stated to be iron rod, under such circumstance it is definitely required to be recovered. This is not a fit case where the discretionary powers under Section 438 of the Code of Criminal Procedure should be exercised. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-