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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.768 OF 2020

Chandu s/o Bhagwanrao Shinde = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.MP Kale,Advocate for Applicant;
Mr.SY Mahajan,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 22nd October, 2020.

PER COURT:-

1. Present applicant is apprehending his arrest in connection with Cr.No.112 of 2020 registered with Tadkalas Police Station, Tal. Purna, Dist. Parbhani for the offence punishable under Section 307, 324, 341, 336, 143, 147, 148, 149, 504 of Indian Penal Code and Section 25(4) of Indian Arms Act.

2. Heard learned Advocate Shri. M.P.Kale for applicant and learned Additional Public Prosecutor Shri. S.Y.Mahajan for respondent State.

3. In his First Information Report (FIR) informant Digambar Abaji Shinde alleges that he had deposed in a case under Atrocities Act against one Munja Kunkar and Chintu Shinde about 2 years ago. All the accused went in front of his house at about 8.00 a.m. on 22.06.2020, when informant was in his house with his wife and son. All the accused started abusing him and pelting stone on his house.

They were calling him out of house and threatening to kill him. When informant went outside, he was assaulted by Munja by an axe and present accused/applicant by means of a sword. They were saying as to why he had deposed against them and they have required to spend Rs.2,50,000/-. He was assaulted on his head, sustaining bleeding injury. His wife and son were assaulted by other accused persons with stick, when they went to rescue informant. He also alleges that other witnesses who were called to help informant and family.

4. It has been vehemently submitted on behalf of the applicant, after drawing attention of this Court to the contents of above-said FIR, that it is highly improbable that after a period of two years, accused persons would have reacted in such manner. If they were having any grudge against the accused persons, then such incident would have taken place earlier. Informant is not saying that any incidence had taken place within the intervening period of two years. Therefore, the motive for alleged crime is doubtful. Cross-complaint has been filed against the informant and his family members. Present applicant also received severe injuries in the incidence. He has been implicated and therefore, his custodial interrogation is not required.

5. Per contra, the learned Additional Public Prosecutor has strongly opposed the application and submitted that at this stage the investigation is

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incomplete. When there is cross-complaint then some incident had taken place. It is alleged in the FIR that present applicant has assaulted the informant with sword. That sword is required to be recovered, therefore, the custodial interrogation is required.

6. At the outset, it is to be noted that the cross-complaint against the informant is Cr.No.113 of 2020 for the offence punishable under Sections 307, 326, 323, 543, 147, 148, 149 of Indian Penal Code and Section 25(4) of Indian Arms Act. It was registered at 10.07 a.m. on 23.06.2020. The present FIR, in which applicant is an accused, has been registered at 9.22 a.m. on 23.06.2020. That means Cr.No.113 of 2020 has been subsequently registered. Perusal of both the FIR would show that the incidences stated therein have occurred at two different places and at different time. Therefore, they may not be strictly speaking cross-complaints.

7. In present FIR, the role attributed to present applicant is that he has assaulted the informant by sword on his head, resulting in bleeding injury. Sword is an 'arm' defined in Indian Arms Act. Nobody is allowed to keep such weapon in his house or possession. Therefore, recovery of said weapon is definitely contemplated. Further, as regards the alleged motive is concerned, it is for the prosecution to prove it till the conclusion of trial. The manner in which the crime has been committed is also required to be seen. Further, the contents of the

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FIR would reveal that applicant was an accused in a case under the Atrocities Act. He has not produced a copy of judgment in that case. Therefore, taking into consideration all these aspects, case is not made out for grant of anticipatory bail. The Application is, hereby, rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV