

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

ANTICIPATORY BAIL APPLICATION NO. 969 OF 2020

Gahininath s/o Vitthal Wagh,
Age 39 years, Occ. Agriculture,
R/o. Wagh Mala, Burudgaon,
Tq. And Dist. Ahmednagar.

... **Applicant.**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Ambhora Police Station,
Tq. Ashti, Dist. Ahmednagar.

... **Respondent.**

...

Advocate for the Applicant : Mr. Niteen V. Gaware.
APP for the Respondent/State : Mr. S.B. Narwade.

CORAM : MANGESH S. PATIL, J.

DATE : 26/11/2020

PER COURT :

The applicant is accused No. 1 in Crime No. 225/2020, registered with Ambhora Police Station, District Beed, for the offences punishable under Sections 327, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, seeking bail in the event of his arrest under Section 438 of the Code of Criminal Procedure.

2. In short, the allegations as can be discerned from the F.I.R. are to the effect that on 08.08.2020 in the morning hours all the accused formed an unlawful assembly, arrived at the scene in a vehicle and assaulted the informant and snatched gold ornament. It is *inter alia* alleged that the applicant caused injury to the right side of chest with a sword. The F.I.R. was lodged on 12.08.2020 and the crime was registered.

3. The learned advocate for the applicant submits that there is enormous delay of four days in lodging the F.I.R. which is sufficient to

substantiate the stand of the applicant that it has been lodged after thought, by way of counter blast to the offence registered pursuant to an F.I.R. lodged by one woman who is accused No. 2 in the present crime in respect of the incident which has taken place around the same date and time wherein she alleged about the informant having molested her.

4. The learned advocate for the applicant further submits that going by the order passed by the learned Additional Sessions Judge, no serious injury was sustained by the informant albeit he has alleged to use a deadly weapon like sword. He submits that rest of the accused have been granted anticipatory bail and the applicant deserves the same treatment.

5. The learned A.P.P. opposes the application. He submits that the offence is serious. It is a matter of formation of an unlawful assembly armed with deadly weapons. There are criminal antecedents. The weapon is to be recovered and the application be rejected.

6. I have carefully gone through the papers of investigation. The applicant is attributed with an injury to the chest with a sword. The informant was initially taken to a Primary Health Centre Devla. The injury certificate issued by the Medical Officer of that hospital does not demonstrate any injury to the chest. It appears that the informant was thereafter taken to a private hospital namely Krishnadeep Hospital. The injury certificate issued by it shows that he had sustained head injury with CLW to right side chest. However there are no other particulars to be seen in the certificate regarding the other particulars of the injury like size and probable cause. Suffice to observe that CLW could not have been caused by a weapon like sword if the sharp side of the blade is used. Interestingly even these two injury certificates, one issued by the Medical officer, P.H.C. and the one issued by the private hospital are in material contradiction and differ as regards the injuries sustained by the informant.

7. There is no explanation to be found in the F.I.R. for delay of four

days in lodging the F.I.R. There is apparently another crime registered against the informant wherein the accused No. 2 in the present crime seems to have alleged about he having molested her.

8. Coupled with the above state of affairs, the other accused have been granted anticipatory bail. If it is a case of formation of an unlawful assembly, each member of the assembly is liable to the consequences ensuing from any thing done in prosecution of the common object. If the other accused have been granted anticipatory bail, even the applicant would be entitled to claim parity.

9. In the circumstances, on merits as well as on the ground of parity the applicant deserves to be released on bail subject to usual terms and conditions.

10. The application is allowed. In the event of arrest of applicant in connection with Crime No. 225/2020, registered with Ambhora Police Station, District Beed, for the offences punishable under Sections 327, 324, 143, 147, 148, 149, 504, 506, he shall be released on bail on his executing personal recognizance for an amount of Rs. 20,000/- (Rs. Twenty Thousand only) and furnishing a solvent surety in the like amount subject to following conditions :

(a) He shall attend the concerned police station on 01.12.2020 and 05.12.2020 between 11 a.m. and 1 noon and shall cooperate the Investigating Officer.

(b) He shall not tamper the evidence or influence the witnesses.

(MANGESH S. PATIL, J.)

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