

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION ST NO.5524 of 2020

Kiran V. Mazire and Anr	.. Applicants
Versus	
State of Maharashtra	.. Respondent

...

Mr. Chaitanya Pendse i/b Shananu Phanse for the applicant.
Mr.N.P. Muzumdar for the complainant.
Mr.Suraj S. Hulke, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 8th DECEMBER 2020

P.C:-

1 The two applicants before the Court are apprehending their arrest in C.R. No. 497 of 2020 registered with Paud Police Station. Offences punishable under Sections 323, 326 504, 506 read with Section 34 of the IPC have been invoked on a complaint filed by one Navnath R. Chavan who is injured. He reported about an incident which took place on 18th October 2020 when he was present in his small shop where he work as a blacksmith and when he was about to bring the shutter down, the applicants asked the complainant to sharpen the edges of the axe which they brought along. The complainant refused to favour them by responding that he is used to sharpening of the

tools of the farmers and he cannot assist them. It is alleged that taking this as an insult and non co-operation, at 9.30 p.m, he was intercepted by the applicants and assaulted. The allegation is that the applicant no.1 inflicted a blow on his head with the blunt edge of the axe and the applicant no.2 hit him by his hands and scratched his face. It is also alleged that they inflicted fist and kick blows to the complainant which resulted into grievous injuries, hence, offence under Section 323 and 326.

2 With the help of the learned APP, I have examined the injury certificate issued by Sassoon General Hospital on examining the complainant. The said certificate give the history of head injury by sword by some known people. However, the certificate record that there is no bone injury but record following injuries :-

- (i) CLW on left forehead 3 x 2 x 1,
- (ii) CLW over right parietal region 3 x 2 x 1,
- (iii) CLW over right parietal region 2 x 1 x 1
- (iv) CLW on right cheek 4 x 2 x 1 and
- (v) CLW on chin 4 x 2 x 1.

3 It is stated that after the examination at Sassoon Hospital, the complainant was taken to a private hospital. The papers of Shreenath Hospital, Mulshi, District Pune are placed on record. The date of admission is '20/10/2020'. Some medicines

are also administered. Discharge is on 22nd October 2020. The medical notes, however, do not refer to any injury of the nature which is contemplated under Section 320 of the IPC and which would be classified as 'Grievous hurt'. Section 323 prescribe penalty for voluntarily causing hurt and hurt is defined under Section 319 to be bodily pain, disease or infirmity to any person and is punishable under Section 323. However, to attract Section 326 which is non bailable offence, the nature of hurt should be grievous and which is caused by dangerous weapons or means. Prima facie, the medical papers do not justify invocation of Section 326. Moreover, the complainant himself has stated that he was assaulted by the applicant no.1 from the rear side of axe and applicant no.2 caused scratches on his forehead and both of them assaulted him by hands and kick blows. In light of the medical papers and the narration of the complainant, Section 323 is attracted which is a bailable offence.

4 Apart from this, the matter has another angle. Both the applicants were held entitled for interim protection by the Addl. Sessions Judge, Pune on 21st October 2020 after having a prima facie view of the matter. This was however, subject to certain stipulations which included the condition that they will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or any

other police officer. When the application came to be heard for confirmation of ad-interim relief, the Special Judge, Pune refused to confirm the same. The affidavit filed by the complainant about withdrawal of the case was brought before the Court and this act of the complainant was construed to be a breach of the condition subject to which the applicants were admitted for protection. This was construed to be an act of tampering with the witnesses by the accused persons.

I am unable to agree with the said observations since I am of the opinion that the Sessions Judge was expected to look into the nature of accusation and as to whether on reading of the FIR, whether the offence under Section 326 was rightly invoked. The complainant has filed an affidavit stating that there is out of Court settlement and when the offence prima facie was to be found only under Section 323 and at the most, under Section 504 and 506 which are all bailable, it could not have been looked at as meddling with the prosecution case.

5 In any contingency, on perusal of the complaint as well as medical certificates, and on hearing the learned APP, prima facie none of the injuries attributed to the applicants could be said to be falling within the purview of grievous hurt, in my considered opinion, is entitled for protection. Application is allowed.

O R D E R

- (a) In the event of his arrest, the Applicant no.1 Kiran Vijay Mazire and applicant no.2 Kiran Vishwas Marathe shall be released on bail in connection with C.R.No.497/2020 registered with Paud Police Station on furnishing P.R. bond to the extent of Rs.20,000/- each with one or two sureties of the like amount.
- (b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (c) The Applicants shall make themselves available as and when required by the Investigating Officer and also co-operate with the Investigating Officer.

5 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J