

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

938 ANTICIPATORY BAIL APPLICATION NO.104 OF 2021

Lakhan Pralhad Misal,
Age 30 years, Occ. Labour,
R/o. Ramnagar/Bhimnagar, Jalna,
Tq. and Dist. Jalna.

...Applicant.

Versus

The State of Maharashtra,
Through Police Station Aurangabad (City),
Dist. Aurangabad.

...Respondent

...

Advocate for Applicants : Mr. Sudarshan J.Salunke

APP for Respondent-State : Mr. S.W. Mundhe

...

CORAM : MANGESH S. PATIL, J.

DATE : 03 MARCH 2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure, as the applicant is apprehending his arrest in connection with Crime No.315/2020 registered with Satara Police Station, Aurangabad for the offence punishable under Section 307 of the Indian Penal Code.

2. In substance, the allegations as can be discovered from the FIR and the papers of the investigation are to the effect that a woman was having live in relationship with the applicant, however, both had separated. He was perhaps harbouring a grudge against her. She also developed some intimacy with informant's brother Kishor. It is alleged that when she along with Kishor was proceeding on his bike and reached the spot, the applicant, who was hiding by the side by a Gate,

suddenly stabbed Kishor with a knife on the stomach.

3. The learned Advocate Mr. Salunke submits that going by the principles laid down in the case of **Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, (1980)2 SCC 565**, custody of the applicant is not necessary to effect recovery of the weapon. He would submit that in fact the FIR has been lodged against an unknown person. There was no animosity between the applicant and injured Kishor. He is being falsely implicated. He is ready to co-operate the Investigating Officer and he may be granted anticipatory bail.

4. The learned APP opposes the application. He submits that offence is serious. Though the FIR has been lodged against an unknown person, since the informant was not knowing the applicant there was no question of there being any reference to the later in the FIR. The woman who is the prime witness in her statement under Section 161 of the Cr.PC. as also under Section 164 of Cr.PC. has specifically stated about the applicant having stabbed Kishor on the stomach. She has also come out with the motive. The injury certificate also reveals that he had sustained a stab injury, which was grievous in nature. This material is enough to reject the request for anticipatory bail.

5. I have carefully gone through the papers of investigation. Though the FIR has been lodged against an unknown person, it is to be noted that it has been lodged by the brother of the injured Kishor. He

was not knowing the applicant or had no occasion to witness the incident, therefore, no much weight can be attached to the fact that the FIR does not disclose the name of the applicant.

6. As can be gathered, the applicant was apparently in a live in relationship with a woman. In statement under Section 161 of the Cr.PC. as also under Section 164 Cr.PC. she has specifically stated that she had severed relationship because of the physical and mental torture to which the applicant had subjected her to. She further narrates the manner in which the incident has occurred and states that while she was traveling with injured Kishor on his motor-cycle, the applicant stabbed Kishor with a knife.

7. The injury certificate shows that injured the sustained a stab injury on the abdomen admeasuring 6x4x2 cms with a sharp object.

8. Considering all the aforementioned facts and circumstances, when there is a clear involvement of the applicant in commission of the crime, when he was carrying a sharp weapon, in all probabilities with some pre-meditation, he is not entitled to anticipatory bail. The application is rejected.

(MANGESH S. PATIL, J.)