

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

**ANTICIPATORY BAIL APPLICATION NO.220 OF 2021
WITH APPLN/823/2021 IN ABA/220/2021**

1] DR. MIRZA SHAHEEN W/O. KHAN RIZWAN
2] KHAN RIZWAN WALI MOHAMMAD KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Kakade Amol N.
APP for Respondent/State: Mr. S.W. Mundhe

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CORAM : MANGESH S. PATIL, J.

DATE : 09.04.2021

PER COURT :

This is an application for anticipatory bail under Section 438 of the Code of Criminal Procedure by the couple involved in Crime No.21/2021 registered with Begumpura Police Station, Aurangabad for the offence punishable under Section 315, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. The allegations in the FIR are to the effect that on account of parking and removal of a vehicle from the spot the informant and the applicant couple indulged in some quarrel. Abuses were hurled and the applicant No.1 is stated to have kicked the wife of the informant on abdomen when she was 8 months pregnant. As a result she had to be rushed to the Government Hospital. She prematurely delivered and the infant succumbed within few days. It is therefore alleged that apart from the other offences the applicants have committed the offence punishable under Section 315 which is the only non-bailable offence being invoked against them.

3. The learned advocate for the applicants would point out that there was no premeditation. The incident had taken place on the spur of moment. In fact the informant and his family members were the aggressors. Several attempts were made by the applicants to file a complaint against them even by writing to the Commissioner of Police but to no avail and the Investigating Officer has falsely implicated them having some grudge. The learned advocate would further point out that even before the child died, the Investigating Officer had hurriedly invoked the provision of Section 315 while registering crime.

4. The learned advocate would further submit that the applicants are medical practitioners having their own hospital. There are no criminal antecedents. In fact the allegations are only attributed to the applicant No.1 with which the applicant No.2 has no concerned. He is also suffering from illness and in fact is taking treatment in the I.C.U. The applicant No.1 being his wife needs to look after him. There is nothing to be recovered or discovered from the applicants. They are ready to co-operate the Investigating Officer and the Application be allowed.

5. The learned APP duly assisted by the learned advocate for informant strongly opposes the application. He submits that the offence is serious. The applicant No.1 in spite of being a medical practitioner has kicked in abdomen of the wife of the informant who was 8 months pregnant. Knowledge and intention can certainly be attributable to her regarding the consequence of her act. There are several witnesses who had seen the incident. The offence being serious, custodial interrogation of the applicants is necessary. The Application be rejected.

6. I have carefully gone through the papers of the investigation. Admittedly, except the offence punishable under Section 315 of the Indian Penal Code the other offences are bailable.

7. So far as the offence punishable under Section 315 of the Indian Penal Code is concerned, going by the allegations in the FIR, the incident having taken place on a spur of moment for some trivial reason, the applicant No.2 cannot be attributed with either the knowledge or intention of the acts done by or attributed to the applicant No.1 regarding kicking the informant in the abdominal region. Therefore, there are no serious allegations against the applicant No.2 of commission of any non-bailable crime and consequently he is entitled to anticipatory bail.

8. As far as the allegations attributable to the applicant No.1 are concerned, true it is that at this juncture there is material to show that the applicant had kicked in the abdominal region of the informant's wife. However, the severity of such kick and its consequence can only be ascertained by medical opinion. The incident is stated to have taken place on 19.01.2021. The child was born prematurely on 21.01.2021 and died on 04.02.2021. It is in view of such state of affairs, when a query was put to the learned prosecutor as to what medical opinion has been obtained by the Investigating Officer, he points out that the Investigating Officer had put couple of queries to the concerned Medical Officer from the Department of Obstetric and Gynecology of the Government Medical College, Aurangabad. It was replied on 01.02.2021 that there could be several reasons for premature delivery. Hurt on the abdominal region could also be one of the reasons. This was in reply to the specific query as to if the injury sustained in the incident could have caused premature delivery. More importantly to the second query as to if what is the reason for premature delivery, the medical opinion states that no specific reason could be expressed. If such is the state of affair, there is no medical evidence at this stage to draw any inference that the premature delivery of the informant's wife was caused by the assault.

9. Apart from the above state of affairs, there is absolutely no

material available in the papers of the investigation to reveal as to if the Investigating Officer has independently sought further opinion as to the cause of death of the infant much less to establish any nexus between the assault and the death. Going by the ingredients for constituting the offence punishable under Section 315 of the IPC, it is highly imperative for the Investigating Officer to have solicited some medical opinion. Neither the cause of death of the child nor any nexus between the alleged assault and the cause of death is brought on record.

10. It is further pertinent to note that, as can be revealed from the papers produced by the original informant in his application seeking permission to assist the Prosecutor, it is against the medical advice that the informant and his wife had taken away the child from the Government Hospital and was again readmitted after it became serious after few days.

11. We do not know as to how far, in terms of Medical Jurisprudence this could have a bearing on the facts and circumstances of the case but the fact remains that even the informant and his wife had taken away the child while it was being medically treated at the Government Hospital against the medical advice.

12. Be that as it may, considering all the aforementioned facts and circumstances, there is not enough material to infer that the acts of the applicant No.1 would constitute the offence punishable under Section 315 of the Indian Penal Code. She is a medical practitioner and unlikely to jump the bail. Nothing is to be recovered by or discovered from her.

13. The Application is allowed. In the event of arrest of the applicants in connection with Crime No.21/2021 registered with Begumpura Police Station, Aurangabad for the offence punishable under Sections 315, 323, 504, 506 read with Section 34 of the Indian Penal Code, they shall be

released on bail on their executing personal recognizance for an amount of Rs.20,000/- each and furnishing a solvent surety in the like amount each subject to following conditions:

- a) They shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him.
- b) They shall not tamper the evidence or influence the witnesses in any manner.

(MANGESH S. PATIL, J.)

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