

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

933 ANTICIPATORY BAIL APPLICATION NO.407 OF 2021

**ISHWARSINGH SARDARSINGH CHAUHAN
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Godhamgaonkar M.D.
APP for Respondent : G. L. Deshpande.

**CORAM : MANGESH S. PATIL, J.
DATE : 05.05.2021.**

PER COURT :

The applicant is seeking bail in the event of his arrest in connection with Crime No. 53/2021, registered with Itwara Police Station Nanded, District Nanded for the offences punishable under Section 326, 323, 504 read with Section 34 of the Indian Penal Code.

2. Briefly stated the allegations are to the effect that the informant/injured was getting his old house demolished with the help of labours. The brother of the applicant who is the co-accused arrived there at 10.30 a.m. and started hurling abuses at the informant on the ground that some debris had fallen in his garden pots. The brother of the applicant then called the applicant. Applicant then slapped him whereas his brother pushed him to the ground and started assaulting the informant with a wooden log. Even the applicant then started kicking him. When the interveners Garudkar, Merkar and even his own father arrived and tried to rescue him the applicant and his brother also slapped his father. The informant was taken to hospital. One of his ribs was fractured. He subsequently lodged the F.I.R. and the offence was registered.

3. The learned advocate for the applicant would submit that accepting

the allegations at their face value the grievous injury is attributable to his brother and not to the applicant. The offence punishable under Section 326 of the Indian Penal Code would therefore be attracted against the brother and not against the applicant.

4. The learned advocate would further submit that there was no animosity or *mens rea*. The incident had taken place on the spur of moment. There was no premeditation. Nothing is to be recovered from and discovered by the applicant. He is already suffering from illness and is taking treatment at Nagpur. He is ready to cooperate the Investigating Officer. There is no need to arrest him. Applying the principles laid down in the case of *Siddharam Satlingappa Mehetre V/s. State of Maharashtra and Ors. (2011)1 Supreme Court 694* the applicant be granted anticipatory bail.

5. The learned A.P.P. opposes the application. She submits that the offence is serious. There are independent witnesses. It is not that the incident had taken place without any premeditation. There has been animosity between the two families on account of construction of the adjoining properties. The brother of the applicant is attributable with an assault with a stick causing fracture injury to the ribs. Both the brothers i.e. applicant and his brother have acted in tandem, sharing a common intention and have assaulted the informant. Even the brother of the applicant is not traceable. The wooden log is to be recovered. There is every possibility of applicant causing obstruction in completing the investigation. Custodial interrogation of the applicant therefore is necessary to trace out his brother and to recover the wooden log.

6. I have carefully gone through the papers of the investigation. There is enough material in the form of statements of not only the persons related to the informant but even independent witnesses in the form of labours who in unison have stated as to how the applicant and his brother assaulted the informant with a wooden log.

7. There is also medical on record to show that the informant did sustain fracture of the 8th rib.

8. The F.I.R. has been lodged promptly. There is every room to believe that the applicant and his brother by sharing a common intention have assaulted the informant causing a grievous injury. The brother of the applicant is also not traceable. The applicant has conveniently fled to Nagpur and is now seeking anticipatory bail under the pretext of illness and the fracture injury being attributable to his brother and not to him. If it is a matter of sharing of common intention, the applicant cannot be allowed to take advantage of this fact at this stage of the investigation.

9. As is pointed out by the learned A.P.P., the two sides seem to be at loggerheads not for the first time. Even earlier, there seems to be some grievance made by the informant's family regarding illegal construction being carried out by the applicant.

10. Considering all the aforementioned state of affairs, the applicant is not entitled to take shelter of the principles laid down in the case of **Siddharam Mehetre** (supra).

11. The Application is rejected.

(MANGESH S. PATIL, J.)

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