

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

ANTICIPATORY BAIL APPLICATION NO. 448 OF 2021

Abhishek s/o Anil Chaudhari @ Chaudhary ... Applicant
Versus
The State of Maharashtra ... Respondent

....
Mr. A. D. Ostwal, Advocate for the applicant
Mr. Y. G. Gujrathi, APP for the respondent-State
....

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 28th MAY, 2021
PRONOUNCED ON : 03rd JUNE, 2021**

ORDER :-

. This is an application for bail under Section 438 of the Code of Criminal Procedure. The applicant claims to have an apprehension of being arrested in connection with Crime No.0082/2021, registered at Gangakhed Police Station, Gangakhed, District Parbhani, for the offences punishable under Sections 307, 323, 504 read with 34 of the Indian Penal Code and under Section 4/25 of the Arms Act.

2. Heard. Perused the First Informant Report (FIR) and the related papers.

The FIR has been lodged by the victim himself 2/3 days after the alleged incident. It has been alleged in the FIR that the applicant and the informant are the friends. The informant had given the applicant, hand loan. He had repeatedly been asking the applicant to pay back his money. On 08.03.2021, the applicant told the informant on phone to have paid his money to their common friend Krushna Galshinge. The applicant asked the informant to come to the agricultural field, behind the applicant's house. The informant, therefore, went near M.S.E.B. office by 2.30 p.m. and told the applicant to have come there. The applicant along with Krushna and Akash, came there. Krushna slapped the informant at the instance of the applicant. The informant too gave him a slap. The applicant started abusing him. Krushna (co-accused) caught hold of the informant. At the instance of the applicant, Akash fetched a sword and gave it to the applicant. The applicant inturn, attempted to assault on the head of the informant. He raised his hands to ward off the blow. Blow on his right hand resulting into grievous injury. The applicant again attempted second blow on head. It fell on left hand of the informant. The friends of the informant were passing by. They raised alarm. The applicant and his associates fled. The

informant's father was informed of the incident. He came and took the informant to the hospital.

3. Shri A. D. Ostwal, learned Advocate for the applicant would submit that the applicant is 23 years of age. A minor incident has been blown out of proportion. There is delay of $\frac{3}{4}$ days in lodging of the FIR. The informant's father is a practicing lawyer at District and Sessions Court. The FIR is replete with exaggeration and concocted version. The informant was taken to the hospital of his maternal uncle. The medical papers have been manipulated to make the incident serious one. Co-accused have been granted bail. The sword has been recovered. Investigation is almost complete. Due to present Covid pandemic, it would not be desirable to keep the applicant behind the bars exposing him to health hazard. The learned Advocate urged for grant of application with any stringent conditions.

4. Learned APP would on the other hand submit that the informant has been assaulted with a sword. He suffered multiple injuries. It is, therefore, not a fit case to grant the applicant bail under Section 438 of the Code of Criminal Procedure.

5. It is not that no incident did take place on 08.03.2021. Admittedly, the informant's father, practicing lawyer, had rushed to the scene of offence, immediately. He took the informant first to the District Hospital, Parbhani and then shifted him to Dr. Halnikar Hospital at Latur. It has been specifically averred in the application that Dr. Halnikar is the maternal uncle of the informant. With a view to aggravate seriousness of the alleged offence, medical papers are said to have been created. There appears to be a substance in the contention of the applicant. The medical papers issued by Dr. Halnikar Hospital indicate informant to have suffered four injuries. In the FIR, it has not been disclosed that Dr. Halnikar is the maternal uncle of the informant. It appears that father of the informant had all along been with him. It is he, who brought the M.L.C. statement of the informant to the concerned police station. Admittedly, the informant was first rushed to the District Hospital, Parbhani. The medical papers issued by the said hospital on the very day of the incident, indicate the informant to have suffered the following injury.

“Left tendon injury (flexor digital superficial and profusion) associated with Neurovascular injury”.

As such, there are glaring inconsistencies between the certificate issued by the Medical Officer, District Hospital, Parbhani and the Medical papers of Dr. Halnikar Hospital, Latur. It is true that the informant has suffered a grievous injury. The informant was allegedly assaulted by the applicant and his two associates. Had they really intended to eliminate him, he would have been given number of blows. The contention of the applicant that the allegations in the FIR have been exaggerated on the intervention of the informant's father, a practicing lawyer, may sound reasonable. The reasons are not far to seek. All the three have been sought to be connected with offence punishable under Section 307 of the Indian Penal Code with allegations in the FIR, namely, Krushna caught hold of the informant, Akash fetched sword on the say of the applicant and handed it over to him who in-turn attempted to inflict it on his head. All these observations are *prima-facie* in nature. The trial Court shall not be influenced thereby. Based on the allegations in the FIR, both the co-accused had been arrested and have been released on bail. The sword has been recovered. The applicant is 23 years of age. True, the victim is of 21 years of age. From the papers of investigation, I am of the view that no custodial interrogation of the applicant is required. I

am, therefore, inclined to grant him the relief. Hence, following order.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.0082/2021, registered at Gangakhed Police Station, Gangakhed, District Parbhani, for the offences punishable under Sections 307, 323, 504 read with 34 of the Indian Penal Code and under Section 4/25 of the Arms Act, the applicant be released on bail on executing P R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with surety bond in the like amount.
- (iii) The applicant shall appear before the concerned Investigating Officer as and when required. He shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]