

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

ANTICIPATORY BAIL APPLICATION NO.579 OF 2021

1] GAJANAN VILAS RATHOD
2] SHUBHAM BHASKAR JADHAV

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Salunke Sudarshan J.
APP for Respondent/State: Mr. N.T. Bhagat

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CORAM : MANGESH S. PATIL, J.

DATE : 01.07.2021

PER COURT :

The applicants are two of the accused from Crime No.112/2021 registered with Jintur Police Station, District Parbhani for the offence punishable under Sections 307, 324, 342, 504, 143, 147, 148, 149 of the Indian Penal Code, seeking bail in the event of their arrest.

2. The allegations in the FIR refer to two episodes. In the first episode at about 6:30 p.m., the applicant No.1 and one Govind accosted the nephew of the informant who is also named Gajanan and started questioning him as to why he had accelerated his motorcycle while passing by them. When he tried to apologize applicant No.1 is stated to have assaulted him with an iron rod causing head injury. He was taken to a hospital and given treatment but he did not immediately lodge any complaint.

3. In the second episode, it is alleged that having seen that Gajanan was having a bandage to the head informant asked him as to the cause and the former narrated the incident which had taken place in the evening hours. It is then alleged that the informant along with his relations went to the house of Laxman Babanaik Rathod to question as to why Gajanan was assaulted. It is alleged that all the other accused persons along with the applicant No.2 assaulted the informant and his relations. The applicant No.2 is stated to have assaulted Raju Subhash Rathod with an iron rod on the thigh, chest and below the knee. The FIR was lodged and the offence was registered.

4. The learned advocate for the applicants would submit that the applicant No.1 is not at all even referred to have played any role in the second episode. As far as first episode is concerned though he is stated to have assaulted Gajanan with an iron rod, there was no premeditation. The incident had occurred on the spur of moment. Even the allegations as to the use of iron rod are vague in as much as apart from the applicant No.1 even one Govind Babanaik is also stated to have assaulted him.

5. As far as second applicant is concerned, the learned advocate would submit that even the second episode had not occurred with any premeditation. In fact the informant along with the relations had gone to the house of the accused persons to question them about the assault on Gajanan. It is thereafter that the alleged incident is stated to have occurred. In fact, the informant and his relations had reached their with intention to

take revenge of the earlier incident. A counter FIR has also been registered in that respect. As a counterblast to that FIR the present FIR has been lodged belatedly. The applicant No.2 is serving in S.R.PF and was not even present at the time of incident but has been falsely roped in. He is not likely to jump the bail. He will cooperate the Investigating Officer. The rest of the accused have already been released on regular bail/ anticipatory bail and the applicants may be granted anticipatory bail.

6. The learned APP opposes the Application. He submits that irrespective of the nature of the injuries, it is the matter of record that there are as many as four persons who had sustained several injuries meaning thereby that the accused persons in furtherance of their common object have carried out the assault by using weapons which could not have happened but for premeditation. Since the prosecution is invoking Section 149 of the Indian Penal Code, each member of the unlawful assembly would be equally liable for all the consequence that have ensued pursuant to anything done in furtherance of the common object. He would submit that in the first episode Gajanan had sustained head injury attributable to the applicant No.1 whereas in the second episode Raju has sustained several injuries which are being attributable to the applicant No.2. In view of such specific and precise allegations, no discretion be exercised in their favour. The Application be rejected.

7. I have carefully gone through the papers of the investigation. As far as applicant No.1 is concerned, the allegations refer to and attribute

him the role only in the first episode wherein he along with one Govind are stated to have assaulted Gajanan with an iron rod. However, *ex facie*, the allegations are vague. The papers of the investigation also do not reveal that any statement of his (Gajanan) is recorded so as to have some clarity. His Injury Certificate does show that he had sustained four injuries but all of them are stated to be simple and caused by hard and blunt object. Since that episode had occurred on the spur of moment and there was no premeditation, in my considered view applicant No.1 is entitled to anticipatory bail, more so when there is no whisper about his involvement in the second episode.

8. As far as the applicant No.2 is concerned, it is alleged that the informant along with his relations had gone to the house of the accused persons to question them about the assault on Gajanan and it is thereafter that the incident had taken place. This *prima facie* indicates that the accused persons were very well present in their house and it is the informant and his relations who had gone there meaning thereby that there was no premeditation.

9. In this regard it is also important to note that in fact the informant and his relations are now being alleged to have committed criminal house trespass with an intention to assault the accused persons and now they have been roped in the FIR lodged by one Puja.

10. Bearing in mind the above state of affairs, the allegations against the applicant No.2 are about he having assaulted Raju with an iron

rod. The Injury Certificate of Raju would reveal that he also sustained three simple injuries and one contusion to the left leg about which no opinion has been expressed by the concerned Medical Officer. None of the injury is stated to be grievous one.

11. Again, accepting the allegations at their face value, even this second episode has taken place when the informant along with his relations had reached the house of the accused persons and not vice versa. Therefore *prima facie* it is doubtful whether it can be said that there was an unlawful assembly with some common object, much less to carryout any assault by comprehending that the informant and his relations would reach their house.

12. Though there are few other injured persons, the applicant No.2 is not being attributed with the injuries sustained by them. The other accused have been released on regular bail /anticipatory bail.

13. Considering all the aforementioned facts and circumstances, in my view, this is a fit case where the discretion can be exercised in favour of grant of anticipatory bail.

14. The application is allowed. In the event of arrest of the Applicants in connection with Crime No.112/2021 registered with Jintur Police Station, District Parbhani for the offence punishable under Sections 307, 324, 342, 504, 143, 147, 148, 149 of the Indian Penal Code, they shall be released on bail on their executing personal recognizance for an amount of Rs.25,000/- (Rs. Twenty Five Thousand only) each and furnishing solvent

surety each in the like amount 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.

(MANGESH S. PATIL, J.)

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