

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

ANTICIPATORY BAIL APPLICATION NO. 649 OF 2021

Ashok s/o Baban Banagar,
Age : 24 years, Occu. Agri.,
R/o. Revaki, Tq. Georai, Dist. Beed.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. R. G. Hange, Advocate for the applicant
Mr. N. T. Bhagat, APP for respondent / State
.....

CORAM : V. G. BISHT, J.
DATED : 27th August, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 filed by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0203 of 2021 registered with Georai Police Station, Dist. Beed, for the offences punishable under Sections 307, 147, 148, 149, 326, 323, 504, 506 of the Indian Penal Code.

2. It is the case of the prosecution that two days prior to the incident, the informant and his uncle requested the owner and driver of the vehicle transporting the sand that due to transportation and high

speed of vehicle, there is large spread of dust which is causing damage to their crops and while consuming meal the said dust comes on their person, which is harmful to their life. Therefore, they advised them to transport vehicles by watering road.

3. Prosecution alleges that on 07.05.2021, when the accused Rahul Baban Banagar, Bandu Eknath Chormale, Ashok Baban Banagar (applicant) and Pralhad Shivaji Chormale were changing the tire of tractor loaded with sand in the vicinity of Hingangaon Shivar, the informant and his uncle reached there and asked them as to why they were transporting the sand on the road without watering it. They further told that if they transport sand without watering road, they would inform the police. It is at that point of time, it is alleged, that the accused Rahul Bangar assaulted on the head of the informant by iron tambi, Bandu Chormale gave a blow of spanner on the head of informant's uncle namely, Somnath Nagar and Pralhad Chormale and Ashok Bangar assaulted them by stone and wooden log on their shoulder, back and legs.

4. Mr. R. G. Hange, learned Counsel for the applicant, submits that the informant had suspicion that the applicant and other accused in the present crime used to inform the police about his illegal

activities of sand excavation and, therefore, because of that suspicion the applicant is falsely implicated. The learned Counsel then next submitted that there is delay of five days in lodging the FIR without there being any explanation and thus, there is every possibility of false implication. About the alleged injury, the learned Counsel submitted that there is no corroboration from the medical certificate. The applicant has movable and immovable property at his village and thus there is no question of abscondance or evading the trial.

5. Mr. N. T. Bhagat, learned APP, on the other hand, submitted that the informant and his uncle were assaulted by the applicant and others by means of iron tambi, stone and wooden log. The investigation is in progress and, therefore, the application deserves to be rejected.

6. First of all, it may be noted that the incident in question allegedly took place on 07.05.2021 whereas, the FIR came to be filed on 12.05.2021. Thus, there is substance in the submission of the learned Counsel for the applicant that there is delay of five days in lodging the FIR, which has not been explained in any manner by the prosecution. Coming to the alleged injury inflicted on the person of the informant by the present applicant on shoulder, back and legs by

means of stone and wooden log, I find observation of learned trial Court in the impugned order to the effect that the injury was cerebral oedema i.e. head injury. FIR nowhere shows any such injury having caused by the present applicant. *Prima facie*, there is material inconsistency.

7. Having regard to the above and the fact that there is delay of five days, which has gone unexplained and above noted fact that there is material inconsistency between the injury and the medical certificate as observed by the learned trial Court, I am inclined to allow the present application with certain conditions.

8. In view of the above, I pass the following order.

ORDER

- i. The application is allowed.
- ii. In the event of arrest of the applicant herein in connection with Crime No. 0203 of 2021 registered with Georai Police Station, Dist. Beed, for the offences punishable under Sections 307, 147, 148, 149, 326, 323, 504, 506 of the Indian Penal Code, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand only], with one or two solvent sureties in the like amount.

- iii. The applicant shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv. The applicant shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE