

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

**903 ANTICIPATORY BAIL APPLICATION NO. 724 OF 2021
WITH
CRIMINAL APPLICATION NO. 1585 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 724 OF 2021**

1. Bhivsen s/o Kashinath Misal,
Age; 57 years, Occ; Agril,
R/o; Pangra, Tq. Ashti,
District; Beed
2. Kantabai w/o Bhivsen Misal,
Age; 53 years, Occ; Agril,
R/o; Pangra, Tq. Ashti,
District; Beed.
3. Swaminath s/o Bhivsen Misal,
Age; 21 years, Occ; Agril,
R/o; Pangra, Tq. Ashti,
District; Beed.

...Applicants
(Accused)

VERSUS

State of Maharashtra,
Through Officer in-charge
Amalnear, Police Station,
Taluka; Ashti, District; Beed.

...Non Applicant

...

Advocate for the applicant : Mr. Nilkanth P. Bangar
APP for Respondent-State : Mrs. D.S.Jape
Advocate for Complainant : Mr.D.A.Bide in (Cri. Appln. No.
1585/2021)

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CORAM : SANDEEP K. SHINDE , J.

DATE : 28th July, 2021.

P. C. :

1. Heard.
2. Investigating Officer is present with record. Perused the investigation papers.
3. Applicant No. 1 is son of Kashinath (Complainant). Applicants No. 2 and 3 are the daughter-in-law and a grand-son of Kashinath. Complainant is 75 year old person. He alleged, since he refused to pay Rs. 50,000/- to applicants, they all tied his hands, assaulted by fist and kick blows, caused burns and left him alone at home in that condition. Later, he was removed to Nityaseva Hospital, Shevgaon by his another son Vishnu. Although the incident had taken place on 20th April, 2021; however, Kashinath's statement was recorded on 5th May, 2021, whereafter, an offence punishable under Sections, 307, 324, 323 read with Section 34 of Indian Penal Code, came to be registered against applicants.
4. It is applicants' case that they have been falsely implicated in this case at the instance of Vishnu (brother of applicant No. 1). Learned counsel for the applicants submitted that an attempt to strangle and causing burns are conspicuously absent in the FIR, and since Kashinath did not suffer burns, he was not admitted in the hospital. To verify this submission, I have called for the case

papers of Kashinath, from Nityaseva Hospital, Shevgaon. Case papers show complainant had suffered burns and head injury and therefore was referred to the Primary Public Health Center, Shevgaon.

5. In the context of these facts, since Kashinath had suffered burns, and at the material time, Kashinath was living with the applicants and therefore, circumstances in which he suffered burns were within the special knowledge of the applicants.

6. In consideration of the facts of the case and the material on record, I am not inclined to grant pre-arrest bail to the applicant No. 1) Bhivsen s/o Kashinath Misal and his application is rejected.

7. So far as applicants No. 2) Kantabai w/o Bhivsen Misal, and No. 3) Swaminath s/o Bhivsen Misal, are concerned, it may be stated that applicant No. 2 is the wife of applicant No. 1 and applicant No. 3 is 21 years old son of applicant No. 1. In my view, custodial interrogation of applicants No. 2 and 3 shall not further the prosecution case and directions to join the investigation would suffice the purpose. For the reasons stated, pre-arrest protection is granted to the applicants No. 2 and 3, on the following conditions :

8. i) In the event of arrest of the applicants No. 2) Kantabai w/o Bhivsen Misal, and No. 3) Swaminath s/o Bhivsen Misal, in connection with Crime No. 80 of 2021, registered at Amalner Police

Station, Beed, for the offences punishable under Sections 307, 323, 323 read with Section 34 of the Indian Penal Code, they shall be released on bail, on executing P.R. bond each in the sum of Rs. 20,000/- (Rupees Twenty Thousand) each, with one or more sureties in the like amount.

ii) Application of applicant No. 1) Bhivsen s/o Kashinath Misal, is rejected.

iii) Applicants. No. 2 and 3 shall report to the Investigating Officer, initially on 30th and 31st July, 2021, in between 11.00 a.m. to 1.00 p.m. and thereafter as and when called by the Investigating officer.

9. In the result, Anticipatory Bail Application No. 724 of 2021 is partly allowed and disposed of. Consequently Criminal Application No. 1585 of 2021, for permission to assist the learned APP is also disposed of.

(SANDEEP K. SHINDE)
JUDGE