

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

ANTICIPATORY BAIL APPLICATION NO. 893 OF 2021

1. Pralhad s/o Ganpati Kadam,
Age : 42 years, Occu. Agri.,
R/o. Kopara, Tq. Ahmedpur,
Dist. Latur.
2. Shivaji s/o Ganpati Kadam,
Age : 37 years, Occu. Agri.,
R/o. Kopara, Tq. Ahmedpur,
Dist. Latur.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....
Mr. Ramchandra S. Patil, Advocate for the applicants
Mr. S. B. Narwade, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

RESERVED ON : 27th August, 2021
PRONOUNCED ON : 06th September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0157 of 2021, registered with Kingaon Police Station, District Latur, for the offences punishable under Sections 307, 452, 143, 147, 148, 149, 337, 323, 504, 506 of the Indian Penal Code.

2. It is the case of prosecution that on 17.06.2021 at about 10:00 pm, while the informant was proceeding towards his house, he found a motorcycle parked in the middle of the road belonging to applicant no. 2 and one Shivaji Vyankati Pitale was sitting thereon and when the informant asked him to take the motorcycle aside, he did not listen and said the informant to ask the person to whom it belongs, to take it aside. While the informant himself alighted from his four wheeler to take motorcycle aside, the said Shivaji started abusing and accused Shivaji Kadam, owner of motorcycle, also joined the brawl. Both of them abused the informant and beat him by means of fist and kick blows.

3. Prosecution alleges that on the same day at about 10:30 pm, both the applicants along with other accused went to the house of the informant and assaulted him. Applicant no. 1 inflicted a blow of an axe on the head of the informant while the applicant no. 2 gave a blow of iron rod on the waist and back of the informant. Other accused also assaulted him.

4. Mr. Ramchandra S. Patil, learned Counsel for the applicants, submits that the applicants had also approached the Police

Station as they were assaulted by the informant and others but the police did not record their complaint. The learned Counsel invited my attention to the medical papers of the applicant no. 1 to substantiate his submissions. Moreover, the learned Counsel submits that the ingredients of Section 307 IPC are not attracted so as to establish the commission of offence. He further submits that the dispute in respect of the house property is going on between the parties and, therefore, the applicants have been falsely roped in by the informant, submitted learned Counsel.

5. Mr. S. B. Narwade, learned APP, on the other hand, submits that there is direct evidence of the alleged incident supported by the medical evidence. The investigation is in progress and, therefore, the custody of the applicants is necessary. According to learned APP, even after the incident, two NC's came to be registered against the applicant no. 1 – Pralhad and others.

6. What FIR suggests is that the informant was firstly assaulted by the applicant no. 2 and accused Shivaji by means of fist and kick blows and thereafter in the second incident which took place at the interval of thirty minutes, the informant was again assaulted by

applicant no. 1 by means of an axe and applicant no. 2 by means of iron rod. I have also gone through the injury certificate produced before me by the learned APP. The injury certificate shows the nature of injury as CLW (contused lacerated wound), abrasion and contusion. All the injuries were of simple nature caused by means of hard and blunt object. As far as the injuries are concerned, there is no dispute that the injuries allegedly sustained by the informant were simple in nature.

7. I have also gone through the record, more particularly, documents at Exh. 'D' and it appears that some house matter is pending between the father of the applicant and that of informant.

8. Having regard to the nature of injuries sustained by the informant and as also facts and circumstances of the case, in my considered opinion, this is not a fit case of custodial interrogation. In view of this, I am inclined to allow the application. Hence, the following order.

ORDER

- i. The application is allowed.

- ii. In the event of arrest of the applicants, namely, Pralhad Ganpati Kadam and Shivaji Ganpati Kadam, in connection with Crime No. 0157 of 2021, registered with Kingaon Police Station, District Latur, for the offences punishable under Sections 307, 452, 143, 147, 148, 149, 337, 323, 504, 506 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand] each, with one or two solvent sureties in the like amount.
- iii. The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv. The applicants shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE