

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

ANTICIPATORY BAIL APPLICATION NO. 912 OF 2021

Gangadhar s/o Sambhajirao Kadam,
Age : 44 years, Occu. Agri.,
Mahipal Pimpri, Tq. & Dist. Nanded.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. D. M. Shinde, Advocate for the applicant
Mrs. Vaishali S. Choudhari, APP for respondent / State
.....

CORAM : V. G. BISHT, J.
DATE : 01st September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0153 of 2021, registered with Basmat Rural Police Station, District Hingoli, for the offences punishable under Sections 307, 504 r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 07.07.2021, when the informant had been to his field, he found that the cotton plants in his field had been eaten up by the cattle, therefore, he made an enquiry

with the applicant, which led to a verbal duel. It is alleged that the applicant abused informant and summoned his brother and father, who were working in the nearby field. It is further alleged that the applicant then gave a blow of an axe near the left eyebrow and his brother and father beat him by means of stick.

3. Mr. D. M. Shinde, learned Counsel for the applicant, submits that *prima facie* the ingredients of Section 307 of the IPC are missing. There is delay of three days in lodging the FIR. In such circumstances, the present application deserves to be allowed, argued learned Counsel.

4. Mrs. Vaishali Choudhari, learned APP, on the other hand, fairly submitted that the injuries sustained by the informant were simple in nature and then further submitted that the suitable order may be passed.

5. There is substance in the submission of the learned Counsel for the applicant that there is delay of three days in lodging the FIR inasmuch as the alleged incident took place on 07.07.2021 at about 05:00 pm whereas the FIR came to be lodged on 10.07.2021 at

04:35 pm. No reason is assigned as to why there is delay of three days in lodging the FIR.

6. Reading of FIR would suggest that the applicant had allegedly used an axe while assaulting the informant and caused the injury near left eyebrow. However, the Medical Certificate submitted by learned APP would show that the informant had sustained contusion over chest and abdomen, which were simple in nature. It also shows contused lacerated wound (CLW) on left eye, which was again simple in nature. If the informant would have been assaulted by means of an axe, which is not only a sharp weapon but blunt and hard weapon as well, then in my opinion, the informant could not have sustained injury of CLW of simple nature. This being so, I hold that the applicant has made out a case for consideration.

7. For the aforesaid reasons, I am inclined to allow the application with certain conditions. Hence the following order.

ORDER

- i] The application is allowed.
- ii] In the event of arrest of the applicant in connection with Crime No. 0153 of 2021, registered with Basmat Rural

Police Station, District Hingoli, for the offences punishable under Sections 307, 504 r/w 34 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