

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

ANTICIPATORY BAIL APPLICATION NO. 940 OF 2021

Kailas s/o Khanduji Girhe ... **Applicant**
Age 36 years, Occu: Service
R/o Golegaon, Tq. Aundha Nagnath
District Hingoli

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Station, Aundha Nagnath
Tq. Aundha Nagnath, District Hingoli

Mr. B. N. Magar, Advocate for the applicant,
Mr. V. S. Badakh, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 9th September, 2021
PRONOUNCED ON : 16th September, 2021

ORDER:

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. 237/2020 registered with Aundha Nagnath Police Station, District Hingoli, for the offences punishable under Sections 302, 307, 324, 143, 144, 147, 148, 149, 336, 504, 506 of the Indian Penal Code, 1860.

2. It is the case of prosecution that on 23.01.2020, accused Prakash Vitthalrao Thitte, applicant and other accused came in front of house of the informant and asked as to why he does not settle the case of molestation filed by his mother. The prosecution alleges that the

informant was caught hold from back by accused Babarao Marotrao Hake and accused Prakash Thitte assaulted by means of iron rod on his head and chest. Meanwhile, when informant's father Ashokrao Pole intervened, accused Prakash Thitte also assaulted on his head by means of iron rod and accused Balaji Sudam Hake by means of brick and stick. Other accused also assaulted his father. When informant's younger brother Sachin Pole came to intervene, the applicant hit a brick on his head and as also on the head of informant's father.

3. It appears that informant's father succumbed to the injuries in the hospital and the first information report accordingly came to be lodged.

4. Mr. B. N. Magar, learned counsel for the applicant, submits that as far as the role of present applicant is concerned, it is nowhere alleged that he used deadly weapon. All other accused have been released on bail and recovery is also made. In such circumstance, the present application deserves consideration, urged learned counsel.

5. Mr. V. S. Badakh, learned A.P.P., on the other hand, would oppose the submissions by contending that father of the informant died because of the head injuries. There are eye witnesses to the incident. Learned A.P.P. then invited my attention to their statements and as also the postmortem report to substantiate his submissions. Considering the gravity of the offence, the present application does not deserve consideration, argued learned A.P.P.

6. I have carefully gone through the contents of the first information report. It appears that it was the accused Prakash Thitte who had initially given blow of iron rod on the head of deceased father of the informant. Later on, deceased father was also assaulted on the head by the present applicant by means of a brick. There is no dispute to the fact that accused Prakash Thitte has been admitted on regular bail with certain conditions.

7. I have gone through the postmortem report which clearly shows that cause of death was "Pymentingoencephalitis in a treated case of head injury". It is also not the case of prosecution that the present applicant had given blow of brick repeatedly. It was the blow of iron road given by accused Prakash Thitte which might have proved fatal and then injury had been aggravated by means of brick assault.

8. I have already noted that accused Prakash Thitee has already been released on regular bail. Investigation papers also show that iron road used in commission of offence by accused Prakash Thitte came to be recovered at his instance under section 24 of the Indian Evidence Act, 1834.

9. Having regard to the facts and circumstances of the case and more particularly the role attributed to the present applicant, in my considered opinion, the application deserves consideration.

10. In view of above, I pass following order.

O R D E R

- i. In the event of arrest of the applicant in connection with Crime No. 237/2020 registered with Aundha Nagnath Police Station, District Hingoli, for the offences punishable under Sections 302, 307, 324, 143, 144, 147, 148, 149, 336, 504, 506 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty five thousand only], with one or two solvent sureties in the like amount.
 - ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
 - iii. The applicant shall not tamper with prosecution evidence in any manner.
11. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC