

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

**ANTICIPATORY BAIL APPLICATION NO. 952 OF 2021**

1. Mahendra s/o Abhiman @ Abhimanyu Mohalkar,  
Age : 35 years, Occu. Agri.,
2. Nandkumar s/o Abhiman @ Abhimanyu Mohalkar,  
Age : 33 years, Occu. Agri.

Both R/o. Nanaj, Tq. Jamkhed,  
Dist. Ahmednagar.

**...Applicants**

**Versus**

The State of Maharashtra

**...Respondent**

.....  
Mr. Rahul R. Karpe, Advocate for the applicants  
Mr. S. B. Narwade, APP for respondent / State  
.....

**CORAM : V. G. BISHT, J.**

DATE OF RESERVING THE ORDER : 06<sup>th</sup> September, 2021  
DATE OF PRONOUNCING THE ORDER : 15<sup>th</sup> 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. 0305 of 2021, registered with Jamkhed Police Station, District Ahmednagar, for the offences punishable under Sections 326, 323, 504, 506, 143, 147, 149 of the Indian Penal Code.

2. It is the case of prosecution that on 21.06.2021, while the informant was constructing a toilet near his house, village Sarpanch Mahendra Abhiman Mohalkar (applicant no.1) came there and said that he should not construct a toilet there. On the same day at about 07:45 pm, while the informant was taking dinner, accused Mahendra Mohalkar (applicant no.1), Nandkumar Mohalkar (applicant no.2), Shivaji Babu Mohalkar, Pintu Mohalkar, Mahadeo Mohalkar and other ten unknown persons came and asked the informant's mother as to where her son namely, Ashru i.e. informant is and asked as to why they are constructing a toilet in the land of Grampanchayat. Prosecution alleges that when the informant came out of the house and told that the said land belongs to him, applicant no. 1 assaulted on his both hands by means of a wooden log and when informant's father Lahu Jadhav intervened, applicant no. 2 gave a blow of brick on the back side of his head and applicant no. 1 also hit the same brick on the mouth of informant's father. As a result of which, a tooth was dislocated. Accordingly, FIR came to be lodged.

3. Mr. Rahul R. Karpe, learned Counsel for the applicants, submits that there is a delay of nine days in filing the FIR in question and the same came to be filed after lodging of the FIR by the applicant - Mahendra Mohalkar. According to learned Counsel, by

way of counter blast the applicants have been falsely implicated. They are ready to cooperate with the Investigating Agency and having regard to the allegations, the custodial interrogation is not necessary.

4. Mr. S. B. Narwade, learned APP, on the other hand, opposed the submissions by contending that there are statements of eye-witnesses, who have seen the incident. Since the informant and his father suffered grievous injuries and the fact that the investigation is in progress, the application deserves to be rejected. Learned APP also submitted that the antecedents of the applicants are also not good and, therefore, on this ground also the application does not merit consideration.

5. First of all, it may be noted from the record that it was applicant no. 1 – Mahendra Mohalkar, who had, on 22.06.2021 lodged FIR bearing No. 0290/2021 for the offences under Sections 326, 323, 143, 147, 148, 149, 504, 506 of the IPC, against the father of informant and others and it is only after eight days, the informant in the present case filed the complaint against applicant no. 1 and others. The delay of eight day's is nowhere explained. *Prima facie* it appears, that the incident indeed had taken place between the parties and it was the applicant no. 1, who had filed the FIR first in point of time immediately on the next day of the incident in question. As

already noted, the delay in the present FIR is nowhere explained and in my considered opinion, same will have bearing on the application.

6. Coming to the incident in question, I have gone through the investigation papers and more particularly, the medical certificate pertaining to the father of the informant. As far as the alleged injuries suffered by informant himself is concerned, there is no medical certificate to substantiate those injuries as is claimed in the FIR. Coming back to the medical certificate of the informant's father, it shows CLW over upper lip, fall of right upper incisor tooth socket empty and CLW over scalp centrally. As far as fall of right upper incisor tooth is concerned, same was found to be grievous whereas, the injury on the scalp was simple.

7. Having regard to the facts and circumstances of the case, the delay in lodging the FIR and medical certificate, I am of the considered view that the present application deserves consideration. Custodial interrogation in the circumstances of the case is totally unwarranted.

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

**ORDER**

- i] In the event of arrest of applicants herein, namely, Mahendra s/o Abhiman @ Abhimanyu Mohalkar and

Nandkumar s/o Abhiman @ Abhimanyu Mohalkar in connection with Crime No. 0305 of 2021, registered with Jamkhed Police Station, District Ahmednagar, for the offences punishable under Sections 326, 323, 504, 506, 143, 147, 149 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 only] each, with one or two solvent sureties in the like amount.

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

9. The Anticipatory Bail Application stands disposed of in aforesaid terms.

**[ V. G. BISHT ]**  
**JUDGE**