

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

**9 ANTICIPATORY BAIL APPLICATION NO.75 OF 2022**

PARASRAM AASARAM DESHMUKH  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mrs. Kakade(Matkar) Savita Parmeshwar  
APP for Respondent – State : Mr. A. M. Phule  
...

**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 14.03.2022**

**PER COURT :**

. The applicant is apprehending his arrest in connection with Crime No.309 of 2021 registered with Paithan Police Station, Dist. Aurangabad for the offences punishable under Sections 326, 324, 504, 341 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mrs. Savita Kakade (Matkar) for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is a driver by profession and has been falsely implicated. The co-accused has been released on regular bail. The weapon allegedly used by the present applicant has been recovered from the spot itself and, therefore, there is no question of recovery or discovery at the hands

of the present applicant. The informant has been discharged and, therefore, there is no question of aggravation of the offence. The investigation is complete and charge-sheet is also filed. Therefore, the applicant deserves to be released on anticipatory bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the applicant is absconding. The injury certificate of the informant shows that he had received grievous hurt and, therefore, discretionary relief cannot be granted in favour of absconding accused.

5. Perusal of the FIR would show that it has been lodged by one Siddheshwar Arjun Girge on 15.09.2021 at about 1.28 a.m. with Paithan Police Station, Dist. Aurangabad and it is in respect of an incident that had taken place at about 4.30 p.m. on 14.09.2021. The informant states that he had received the phone call from his daughter stating that she is waiting at Naigaon Phata after she had taken admission to the college and the father should come and pick her up. Informant proceeded on his motorcycle. He could find accused persons including the present applicant obstructing the way of the informant and they started asking as to why he remains as president of Tanta Mukti Samiti. Present applicant got down from the vehicle of his father and then pick stone and pelted it towards the informant causing injury below his eye. The

father of the applicant had then taken one iron rod as well as axe. The iron rod was given to the present applicant and then present applicant had assaulted the informant by said iron rod on the head of the informant. His father had assaulted the informant with axe on his right hand causing him fracture. He was initially referred to Government Hospital, Paithan and then he was referred to Ghati Hospital, Aurangabad. Thereafter, he got himself shifted to Dr. Zargad Hospital, where his FIR was taken.

6. The first and the foremost fact is that the charge-sheet has been filed on 21.01.2022 which shows that the father of the applicant was arrested on 15.09.2021 and for about 5 days, he was in police custody, later on now it is stated that he has been released on regular bail. The criteria for releasing the accused on regular bail is different from the criteria which is to be applied in anticipatory bail. As regards the present applicant is concerned, it has been stated that in spite of search, he could not be found and then it is stated that the charge-sheet has been filed under Section 299 of the Code of Criminal Procedure against him. Though Section 299 of Code of Criminal Procedure is only an enabling Section for the Court to record the evidence in absence of an accused, who is absconding, the fact that is required to be considered here is that the police considered present applicant to be absconding.

Documents have been attached to know the location of the applicant and the help was taken from Cyber Cell. The applicant is now coming with the case that since he is a driver of truck, he had gone out of the village and according to the applicant, he was not absconding. The applicant has not given those details as to when he left village and where he went, when he returned etc. Then, it is surprising that how he could not have noted that his father was arrested by police and had undergone five days police custody. There is sufficient evidence on record to show that the applicant is absconding and, therefore, in view of the decision in *Lavesh Vs. State (NCT of Delhi)*, [2012 (8) SCC 730], no discretionary relief can be granted in favour of an absconding accused.

7. Further, what is required to be noted is the injury certificates. Firstly, it is given by the Rural Health Training Unit, Paithan, who had examined the informant. At the first point of time, two injuries were noted one is dislocation of right shoulder, which is grievous and second is laceration to left temporal region 3 x 0.5 cm straight line anteroposterior area and it is stated to be grievous. The second injury certificate has been given by the Zargad Accident and Multispeciality Hospital, wherein six injuries have been noted. As regards the head injury is concerned, the seal is covering that area and therefore, the

nature of the injury is not readable, however, the first two injuries are stated to be grievous in nature. Merely because the weapon which was allegedly used by the present applicant was found at the spot will not give any advantage to the applicant. Further, there are statements of eye witnesses supporting the informant. Therefore, when *prima facie* evidence also appears to be against the present applicant, he does not deserve the extraordinary relief under Section 438 of the Code of Criminal Procedure. The application stands rejected.

**[SMT. VIBHA KANKANWADI, J.]**

scm