

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.153 OF 2022

GANESH S/O KALYAN KALE

VERSUS

THE STATE OF MAHARASHTRA

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Mr. M. R. Jadhav and Mr. D. S. Patil, Advocate for applicant.

Mr. A. M. Phule, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 03.03.2022

Pronounced on : 05.04.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.420 of 2021 registered with Pachod Police Station, Dist. Aurangabad for the offences punishable under Sections 326, 143, 147, 148, 149 of Indian Penal Code.

2. Heard learned Advocate Mr. M. R. Jadhav for the applicant and learned APP Mr. A. M. Phule for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that it has been lodged by one Vitthal Parasram Kale on 31.12.2021 for the incident that had allegedly taken place at about 1.00 a.m. on the same day. He and his son-in-law were working in his field when due to the land dispute present applicant along with two others i.e. Kalyan Kale, Ganesh Kale and Yogesh Kale assaulted him by axe on his head as well as palm. He has also stated that one Machindra Kharat and Jalinder Kharat also assaulted him by iron pipe and iron rod and caused injury to his right knee and right hand finger. The informant's son-in-law was also assaulted. They were given preliminary treatment in Government Hospital and then they got themselves shifted to United Sigma Hospital.

4. The application has been resisted on the ground that the axe used by the present applicant is yet to be recovered. Possibility of repetition of the crime cannot be ruled out since they are from the same village and also the possibility is expressed that there would be tampering with the evidence. Statements of witnesses have been recorded and one Rameshwar Vitthal Kale, who appears to be the son of informant, has stated that accused – Kalyan Kale was raising dispute as to why the informant has purchased his land. He has not stated as to when the informant has purchased the land of Kalyan Kale, but then it appears that it was the say of Kalyan that he has sold the land to some other

person, but that person had sold the land to the informant. This motive appears to be even at this stage not convincing. According to the witness also, he was in the field at night time and after hearing the voice of his father, he went to the spot and seen that five persons were assaulting his father and brother-in-law. Another eye witness appears to be one Kanif Lavhghale, who was with Rameshwar – son of informant. It is to be noted that if these two persons were present there, they were not assaulted by the accused persons. Supplementary statement of the informant has been taken on 12.01.2021 in which he has stated that accused – Kalyan Kale had assaulted him on his head by axe and when the present applicant had started to give blow of axe, it was resisted by the informant by his hand and it caused injury to the right palm. Medical certificate issued by United Sigma Hospital states that he had sustained three injuries one was, (i) CLW over head sutured 4 x 3cm, (ii) Abrasion and Swelling on right knee and (iii) Cut Injury on right palm – sutured 6 x 1cm. Thus, taking into consideration the injury caused to the right palm of the informant and the fact that he has been discharged, only on the count of seizure of weapon, the applicant need not be asked to be sent in jail or custody of the police. If his presence is made available to the police that would meet the ends of justice. Therefore, with stringent conditions, the application deserves to be

allowed. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) In the event of arrest of applicant – Ganesh Kalyan Kale in connection with Crime No.420 of 2021 registered with Pachod Police Station, Dist. Aurangabad for the offences punishable under Sections 326, 143, 147, 148, 149 of Indian Penal Code, he be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicant should attend the concerned Police Station on every Monday, Wednesday and Friday between 10.00 a.m. to 12.00 p.m., till filing of charge-sheet and cooperate with the investigation.
- IV) He shall not tamper with the evidence of the prosecution in any manner.
- V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm