

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.289 OF 2022

SANDIP S/O JAYSING RAJPUT
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Mr. P. B. Patil, Advocate for applicant.
Mr. V. M. Kagne, APP for the respondents – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 28.03.2022

Pronounced on : 12.04.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.25 of 2022 registered with Shindkheda Police Station, Dist. Dhule for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. P. B. Patil for the applicant and learned APP Mr. V. M. Kagne for the respondents – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. No case is made out to attract the provisions of Section 326 of Indian Penal Code. Other Sections are bailable. It appears that the informant had fell down from his

motorcycle and received the injuries and a false case has been registered after a delay of one month. Nothing is required to be recovered from him. The applicant is ready to abide by the terms of the bail.

4. Learned APP strongly opposes the application and submitted that the delay in lodging the FIR was due to serious injuries those were caused to the informant. He was operated in Bhausaheb Hire Medical College. After he recovered, he has lodged the report. The reason for the dispute may appear to be trifle, but it has resulted in grievous hurt. Informant had gone to dinner at Hotel Mansi, at Shindkheda. There was delay in providing food and, therefore, he was asking the waiter as well as owner of the hotel as to why there is delay. They got annoyed and the informant was assaulted. The wooden log used in commission of the crime is yet to be recovered and, therefore, the custodial interrogation of the applicant is necessary.

5. At the outset, it is to be noted that the FIR has been lodged by one Vijay Hanmantrao Pardhi on 03.02.2022 in respect of the incident alleged to have taken place on 30.12.2021 at about 10.30 p.m. Definitely, there appears to be delay in lodging the FIR. The informant states that he had gone to Hotel Mansi for dinner. All the three accused including the present applicant were present. Informant gave order to

the waiter, however, waiter gave him only Sabji (Cooked Vegetable) and it was told that he would serve the Roti but it was causing time and therefore, the informant asked as to how there is so much of delay in supplying him the order. The Hotel owner Jayesh Rajput then started behaving arrogantly with the informant and there was heat altercation between them. Then co-accused – Dipak and Sandip i.e. present applicant by giving instigation started abusing the informant and dragged him out of the hotel. Then the applicant took wooden log which was outside the hotel and gave blow of the same to the stomach of the informant. The informant was lying there holding his stomach and because of the pains he was not able to raise voice for help. After a while, his nephew spotted him and by calling another relative, he was taken to home. Informant, thereafter, vomited blood and his stomach was paining severely and, therefore, he was taken to Sankalp Hospital on Shindkheda. From there, he was shifted to Dhule Hospital. He was operated for the stomach and was in I.C.U. He got discharged on 22.01.2022. While still undergoing treatment, he lodged the report on 03.02.2022.

6. No doubt, in the aforesaid contents of the FIR, a specific role has been attributed to the applicant, however, it is to be noted that when the nephew of the informant i.e. Rakesh Rajendra Pardhi and the another

relative Jitendra Gorakh Pardhi were knowing every fact of the incident, why there was no attempt by them either to call the police to record the statement of the informant or they themselves could not have lodged the report. At this stage, the police papers though showing statements of witnesses, they are not the eye witnesses. None of the customers, who were supposed to be present in the hotel, have been examined by the Investigating Officer. The statements of other staff members of the hotel also have not been recorded. Certificate from Sankalp Clinic has been taken, but what history was given by the patient to the concerned Doctor is not stated. The injury certificate issued by General Hospital, Dhule shows that they had treated the case as Medico Legal Case and the information might have been given to the police station on 31.12.2021 itself. Then question arises as to why the police had not recorded the statement of informant immediately. It is the usual practice that at the general hospitals in each district there is a police chowki where police were deployed around the clock to take the statements of witnesses/dying declarations etc. Still, why the FIR to come in existence on 03.02.2022 is a question. Further, the informant himself states that he was discharged on 22.01.2022. Still, there is no explanation from 22.01.2022 to 03.02.2022. No doubt, the injury certificate shows that there was complaint about the abdomen and on

31.01.2021 right sided pleural effusion and minimal free fluid in abdomen was seen. Thereafter, the patient was admitted in a surgical ward and operative procedure for perforation, peritonitis with septic shock and second degree blunt trauma was done on 31.12.2021 at 10.30 p.m. It is said that the said injury would have been caused by hard and blunt object and it was grievous and would have been within 24 hours prior to the admission. Taking into consideration all these aspects, the custodial interrogation of the applicant is not necessary, as there appears to be delay. Unless the police take out the cloud of false implication, there could not have been the case for custodial interrogation. Therefore, the applicant deserves to be protected under Section 438 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Application is hereby allowed.
- II) In the event of arrest of the applicant – Sandip s/o Jaysing Rajput in connection with Crime No.25 of 2022 registered with Shindkheda Police Station, Dist. Dhule for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 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 shall remain present before the Investigating Officer on every Monday and Wednesday between 10.00 a.m. to 2.00 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