

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

ANTICIPATORY BAIL APPLICATION NO.323 OF 2022

Shivaji s/o. Sambhaji Gayke ..Applicant

Vs.

The State of Maharashtra ..Respondent

Mr.K.N.Shermale, Advocate for applicant
Mrs.G.L.Deshpande, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : MARCH 17, 2022**

PER COURT :-

This is an application under Section 438 of the Code of Criminal Procedure. The applicant claims to have apprehension of arrest in connection with Crime No.0016 of 2022 registered with Dharur Police Station, Dharur, Dist. Beed, for the offences punishable under Sections 307, 324, 323, 504 and 506 read with Section 34 of Indian Penal Code ("I.P.C.", for short).

2. Heard learned counsel for the parties. Perused the FIR and related papers.

3. The FIR has been lodged by Saraswati on 28.01.2022 in relation to the incident that took place six days there-before, i.e. on 22.01.2022. It has been alleged in the FIR that the applicant has agricultural land in survey no.117 in village Anjandoh. The applicant and the informant are residents of one and the same village. It so happened that on 22.01.2022 by 05:30 p.m., informant's she-goats were grazing in front of her farm house. At that time, the applicant happened to pass-by with his cattle. It is alleged that the applicant started abusing the informant. He complained her as to why he had been defamed by her in the village. The applicant was joined by his wife, son and daughter-in-law. All of them abused the informant. The applicant assaulted the informant on her head with an iron rod. He also hit her with a stone wrapped in the handkerchief. The applicant's wife, son and the daughter-in-law also beat her up. On hearing cries, the neighbors gathered and intervened as well. The informant was rushed to Dharur Police Station. She was, however, first referred to Government Hospital at Dharur and then was shifted to Ambejogai for better treatment. Thus, the informant lodged the report while she was indoor patient at the hospital in Ambejogai.

4. Learned APP would submit that the applicant had assaulted the informant with an iron rod. The medico-legal certificate on record indicates the informant to have multiple injuries. One of them was at parietal region. According to her, serious offence punishable under Section 307 of I.P.C. is, thus, made out against the applicant. She, therefore, urged for rejection of the application.

5. It appears to be a case of fight between the two families. The record indicates that the applicant herein also lodged FIR on 22.01.2022 itself, alleging the informant and her family members to have had assaulted him. A copy of said FIR has been placed on record along with the applicant's injury certificate. A crime for the offences punishable under Sections 324, 323, 504 and 506 read with Section 34 of I.P.C. has, therefore, been registered against the informant and her family members. The applicant has placed on record photographs of the injuries suffered by him. It appears therefrom that the applicant has suffered a head injury. It is only after six days thereof, the informant has lodged the report against the applicant and his family members.

6. True, the FIR in the present case has been recorded while the informant was in the hospital. There is, however, no explanation as to why her family members could not lodge the report same day i.e. on 22.01.2022. The offences against the applicant and others are bailable one except Section 307 of I.P.C. The injuries suffered by the informant are simple in nature. Section 307 of I.P.C. has been invoked in view of the injury to her parietal region.

7. Since the applicant herein has also suffered serious injury to his head and he lodged the FIR against the informant and her family members same day, possibility of filing report against the applicant herein as a counterblast thereto, cannot be ruled out. Said FIR has been lodged by the present informant six days after the alleged incident. Any of the members of the informant's family could have lodged the FIR same day of the incident. Possibility of having made exaggeration in the FIR lodged by the informant cannot be ruled out. It is reiterated that all the offences alleged against the applicant herein are bailable one, except Section 307 of I.P.C., which has been invoked since simple injury has been suffered by the informant to her head. In this factual backdrop, I am inclined to allow the application.

8. In view of the above, the application is allowed in terms of the following order:-

(i) In the event of arrest in connection with Crime No.0016 of 2022 registered with Dharur Police Station, Dharur, Dist. Beed, for the offences punishable under Sections 307, 324, 323, 504 and 506 read with Section 34 of Indian Penal Code, the applicant be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(ii) The applicant shall not tamper with the prosecution evidence in any manner.

(iii) He shall appear before the Investigating Officer as and when called for.

[R.G. AVACHAT, J.]

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