

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 ANTICIPATORY BAIL APPLICATION NO.387 OF 2022

NIKHIL TATYA DHANDE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Karpe Rahul R.
APP for Respondent – State : Mr. V. M. Kagne
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12.04.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.776 of 2021 registered with Karjat Police Station, Dist. Ahmednagar for the offences punishable under Sections 324, 143, 147, 149, 504, 506 of Indian Penal Code (for short “IPC”).

2. Heard learned Advocate Mr. R. R. Karpe for the applicant and learned APP Mr. V. M. Kagne 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. The FIR has been lodged by one Hanumant Prakash Bhosale on 23.12.2021 at about 23.58 hours in respect of an incident alleged to have taken place on the same day at about 4.00 p.m. The incident is

stated to have taken place in Construction and Water Supply Department of Panchayat Samiti Office, Karjat. He states that he had dispute about 3 months ago with the applicant in respect of installation of cable. He then also states that the applicant and one Sagar Demunde had followed him in order to assault him about two months prior to the incident. Therefore, in respect of the said enmity on the date of alleged incident by saying that they would show him what they are, accused Mahendra has assaulted him on his hand and back by wooden stick. The applicant with an intention to kill the informant had tried to give blow on his head with iron rod, however, he ducked as a result of which he sustained injury to his shoulder. The other co-accused have also assaulted him by plastic pipe. He was dragged on the ground by holding leg. He was abused and his clothes were torn. He sustained injuries in the said incident and his money as well as chain from the neck went missing.

4. The learned Advocate appearing for the applicant has stated that co-accused persons have been released on anticipatory bail by learned Additional Sessions Judge, Shrigonda, however, the application filed by the present applicant has been rejected on the ground that he alone had the intention to kill the informant.

5. Learned APP is also relying on the supplementary statement of the informant and submitted that as the applicant alone had the intention to kill the informant, he does not deserve discretionary relief.

6. At the outset, if we consider the FIR as it is the role attributed to the applicant is that he had tried to give the blow on the head of the informant with iron rod, however, he ducked as a result of which he had received injury to his shoulder. The injury certificate issued by Sub District Hospital, Karjat would show that he had sustained five injuries. Injury No.1 is blunt trauma to left forearm just proximal to wrist joint and it is stated to be the fracture of distal end of ulna of left side. That is the only grievous injury he has sustained. Injury No.2 is abrasion on lower back, Injury No.3 is abrasion below right eye vision, Injury No.4 is abrasion on left shoulder. Injury No.5 is abrasion on left side of chest. All these are simple injuries. So, if we consider the injuries, *prima facie* it can be said that it is not supporting the contents of the FIR. The supplementary statement has been recorded on 26.12.2021. In that, he has stated that the present applicant had torn the shirt of the informant and with the help of said torn shirt, he had made a loop and tried to strangle him. The injury certificate does not support the said statement. If that was the important act or serious act, he could have pointed it out to the medical officer. In his FIR as well as in the

supplementary statement, he has stated that accused Mahendra has assaulted him on his hand and back with stick. Injury No.1 which is stated to be grievous can also be attributed to then accused No.1, however, he has been released on anticipatory bail by the learned Additional Sessions Judge.

7. Statements of witnesses, who were working in the said office, have been recorded. Though they are saying that the informant was assaulted, none of them had identified any person nor named them. It is also to be noted that when the matter was before the learned Additional Sessions Judge, that is the application filed by the present applicant for anticipatory bail, ad-interim relief by way of application Exhibit-05 was granted by the concerned Court on 01.01.2022. However, his application was ultimately rejected on 21.03.2022. From the police papers, it can be seen that the Investigating Officer has not arranged for the identification parade in between 01.01.2022 to 25.03.2022. There appears to be no attempt to get the identification of the accused fixed through the eye witnesses. Even after grant of anticipatory bail of the co-accused, there appears to be no attempt to have such identification parade. It is also not clear as to whether the co-accused persons have been arrested and were released in view of the order passed by the learned Additional Sessions Judge.

8. Another aspect is also required to be consider that initially the FIR was for the offence punishable under Section 324 of IPC and other Sections. Later on Section 326 of IPC was added and thereafter, Section 307 of IPC was added. Then even Section 353 of IPC was added, but later on deleted. Either the informant himself is not firm about the facts of the case or the Investigating Officer is not properly considering the ingredients. Taking into consideration the statements of the witnesses recorded, medical certificate to be considered along with the contents of the FIR as well as supplementary statement, the applicant deserves anticipatory bail. Hence, the following order :-

ORDER

I) Application is hereby allowed.

II) In the event of arrest of the applicant – Nikhil Tatya Dhande in connection with Crime No.776 of 2021 registered with Karjat Police Sttaion, Dist. Ahmednagar for the offences punishable under Sections 324, 143, 147, 149, 504, 506 of IPC, 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, Wednesday and Friday 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