

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

ANTICIPATORY BAIL APPLICATION NO.452 OF 2022

Raju S/o Dagadu Avachar

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Mohd. Rajioddin Mohd. Niyajoddin

...RESPONDENTS

...
Mr.Swapnil S. Rathi Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1 - State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 19th APRIL, 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.76 of 2022 registered with Parbhani (Rural) Police Station, Parbhani, District-Parbhani for the offence punishable under Sections 307, 326, 324, 337, 298, 143, 144, 147, 148, 149 of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocate for the applicant and learned APP for the respondent – State.

3. The learned Advocate for the applicant has submitted that there is a cross complaint vide Crime No.77 of 2022 registered with the same Police Station on the same day for the offence punishable under Sections 324, 143, 144, 147, 148, 149 of the Indian Penal Code. However, it has been lodged by one Kalyan Uttamrao Khawale against six unknown persons. He states that he and his friends Kailas Khawale and present applicant – Raju Avachar were assaulted by unknown persons and it appears that in order to give a counter blast, the present First Information Report (for short "FIR") with concocted story has been lodged. The custodial interrogation of the applicant is not necessary. Applicant is employed in Indian Army but he had come to his native place to meet his family members. He is presently posted in Madhya Pradesh. No injuries which could attract the ingredients of Section 307 as well as Section 326 of the Indian Penal Code have been sustained by anybody. Unnecessarily Section 12 of the Protection of Children from Sexual Offences Act has been invoked. The applicant is ready to abide by the terms of the bail.

4. Learned APP strongly opposes the application for grant of any interim relief. He submits that the matter is coming for the first time and he is yet to receive the police papers, however, taking into consideration the role attributed to the applicant in the FIR, interim protection need not be granted.

5. FIR has been lodged by the informant on 19th March 2022 at about 23.51 hours, however, it appears that it has been registered at 00.14 hours on 20th March 2022. It is in respect of the incident that had taken place at about 1.30 p.m. on 18th March 2022. The informant is the Muslim person and the incident is stated to have taken place in his field where he is residing also with his family. It appears that he was knowing the present applicant - Raju Avachar, Kalyan Khawale, Krushna Kurdane and Kailash Khawale. Their names have been specifically taken and it is stated that all these persons were with some three unknown persons. Informant was knowing the fact that present applicant is serving in Indian Army. He states that after coming to their house, the accused persons started picking up the hens for preparing non-veg food. Applicant pushed the wife of the informant and he untied 2 to 3 she-goats, abused the informant

and his wife and they all had given threat that they would take away 10 years old daughter of the informant and they started to drag the girl. When informant obstructed them and asked as to why they are behaving so, all of them had picked up the sticks which were lying near the house and started assaulting informant, his nephew, son etc. They had also assaulted these persons with iron rod. The blows have been received by the informant on his head and right side of the back. His nephew received injuries to his hands, legs and face. The accused persons thereafter pelted stones. Another son of the informant who had come to rescue them, was threatened with pelting of stones, because of which he fled away. According to the informant, he as well as his nephew have received severe injuries. Informant's injury to the head required stitches to be applied and nephew got his right hand fractured.

6. Definitely, head is vital organ of the body and at this stage it cannot be said that it would not have been fatal and it will not attract ingredients of Section 307 of the Indian Penal Code. The manner in which the offence is stated to have been committed, is required to be taken into consideration. Merely because the applicant is in Indian Army, we cannot use discretion in his

favour. The persons from Indian Army are seen with an honour and they cannot afford to behave with the citizens with brutality. So far as the cross complaint is concerned, the same would rather confirm applicant's presence at the spot. Therefore, taking into consideration the contents of the FIR, no case is made out to grant discretionary relief. The Application, therefore, deserves to be rejected at the threshold.

7. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]