

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

ANTICIPATORY BAIL APPLICATION NO.1045 OF 2022

BHIMRAO TEJA CHAVAN AND ANOTHER ..APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA ..RESPONDENT

...
Mr. Swapnil S. Rathi, Advocate for the Applicants.
Mr. S. B. Narwade, APP for Respondents-State.
...

CORAM : S. G. MEHARE, J.

DATED : 24th AUGUST, 2022.

PER COURT:-

1. Heard the learned counsel for the applicants and the learned APP for the respondent-State.

2. It has been alleged against the applicants that they have assaulted the injured who is real brother of applicant no.1. The applicants and the injured had dispute over the land. The decree is in favour of the applicants; however, complainant was forcefully entering into the filed of the applicants. Therefore, they were asking him why he was cultivating the land. The applicants have lodged report against the complainant. It has been alleged against the applicants that on the day of the incident, the applicant Bhimrao and his son Vipul assaulted him with hammer on his back and the hand and the other two women caught hold his hands

and legs. Therefore, he has suffered serious injuries.

3. The learned counsel for the applicants would submit that the complainant entered into the field forcefully. He was under the influence of liquor. He was sleeping under the mango tree. When the applicants made an inquiry with him, he became aggressive. He lost his balance and fell on the stone, which was under the mango tree. They have not used any weapon. On the contrary, the complainant was abusing them in filthy language. The applicant was alone in the field and there was no other person. Since the weapon is not used, there is no reason to cause injury to the complainant. The applicant no.1 is in service, but only to grab his property, the false allegations of assault with hammer have been levelled against him.

4. It has been argued by the learned counsel for the applicants that the investigating officer has not brought the correct facts before the Court. The complainant fell on the stone and it was stained with the blood, but instead of making investigation in correct direction, the police believed the false story of assaulting with hammer. The life of the applicants is at stake. If they would be sent behind the bar, the applicant no.1 may lose his job and his son may not get any public service in future. Therefore, anticipatory bail be granted to them.

5. The learned APP has vehemently argued that the offence is serious. The hammer is allegedly used in the crime. It is to be recovered. He would referred to the injury certificate that corresponds the body parts whether it has been allegedly assaulted by the applicants. He would also refer to the statement of one eye witness; however, it is recorded about one month and a week after the incident and she is the daughter-in-law of the injured. He would also refer to the statement of one driver who took the injured to the police station. He would also refer to the MLC. It is totally silent about the incident or assault to the injured by the applicants and use of weapon.

6. There appears substance in the arguments advanced by the learned counsel for the applicants that the complainant fell on the stone as the complainant was under the influence of the liquor. The spot panchanama reveals that a stone was buried in the land and it was stained with blood. Therefore, the possibility of falling on the stone cannot be ruled out. Though there are injuries on the body which the complainant as alleged to be assaulted, but there no injury that can be infringed by a hammer. The hammer may cause deep injury. Since, there was a blood to the stone buried in the land on the spot of incident, the possibility of causing fracture and other injuries due to falling on the stone cannot be ruled out.

The applicants have specific case that the complainant was disturbing their possession though the decrees were in their favour.

7. Considering the overall material placed before this Court, the possibility of giving different colour to the incident cannot be ruled out. In normal course the anticipatory bail may not be granted whether the weapon is not recovered, but this case has peculiar facts and supported with the circumstantial evidence, hence, the application deserve to be allowed. Hence, the following order:

ORDER

- a. The application is allowed.
- b. The interim protection granted to the applicants by order dated 10.08.2022 is confirmed on the same terms and conditions of the bail bond.

(S. G. MEHARE)
JUDGE