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

ANTICIPATORY BAIL APPLICATION NO.1063 OF 2022

**PANKAJ PANDHARINATH KOLI
VERSUS
THE STATE OF MAHARASHTRA**

**WITH
ANTICIPATORY BAIL APPLICATION NO.1068 OF 2022**

**VIVEK DNYANESHWAR KOLI
VERSUS
THE STATE OF MAHARASHTRA**

**WITH
ANTICIPATORY BAIL APPLICATION NO.1067 OF 2022**

**SUNIL LILADHAR KOLI
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicants : Mr. Hemant Pawar h/f Mr. H.P. Randhir
APP for Respondent/State : Ms. V.S. Choudhari

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CORAM : S.G. MEHARE, J.

DATED : 06th SEPTEMBER, 2022

PER COURT:-

1. These are the three applications of the accused in the same crime under Section 438 of the Criminal Procedure Code.
2. Learned counsel for the applicants would submit that there is nothing against the applicant Sunil. However, it has been alleged against the applicant Vivek that he picked up the bamboo stick from the spot and assaulted the injured on his back. So far as the allegations against the applicant Pankaj are concerned, it has been alleged that he has brought one sharp weapon from his home and

caused the injury to the injured. The injuries sustained to the injured are simple. Therefore, Section 326 of the Indian Penal Code would not attract. In the light of the allegations, the custodial interrogation of the applicants is not required. After releasing the applicants on bail, the police may arrest them formally and then recover the weapons. Two co-accused have already been released on anticipatory bail. Therefore, anticipatory bail may be granted to the applicants.

3. Learned APP has strongly opposed the application contending that there are direct allegations of assault with weapon against the applicants Pankaj and Vivek. So far as the applicant Sunil is concerned, he was the member of the unlawful assembly. Therefore, he is liable for the activities and acts committed by other co-accused. There are overt act at the instance of the applicants. No weapon has been recovered yet. Though the injuries were simple, the acts of the accused were aggressive and they were intending to cause serious injury to the persons injured. Therefore, the applications deserve to be dismissed.

4. Perused the papers. So far as the applicant Sunil is concerned, bare allegations have been levelled against him that he was present there and caught hold the injured. No specific allegations of using the weapon and assault have been levelled against him. So far as the applicants Pankaj and Vivek are concerned, there are direct allegations levelled against them that they have caused injuries to the

injured with sharp weapons and bamboo sticks. The weapons are yet to be recovered. The recovery of the weapons would complete the investigation. The weapons may have a trace evidence that may be useful to prove the offence against the applicants Pankaj and Vivek. Whether Section 326 would attract or not would be a matter before the learned Trial Court. The applicants have an opportunity to file an application for deleting or correcting the charges. *Prima facie* there is material against the applicants Pankaj and Vivek for the custodial interrogation. However, applicant Sunil may be granted anticipatory bail. Hence, the following order :

ORDER

- (A) Anticipatory Bail Application No.1067 of 2022 is allowed.
- (B) Interim protection granted to the applicant Sunil in Anticipatory Bail Application No.1067 of 2022 by order dated 11.08.2022 is confirmed on the same terms and conditions.
- (C) Anticipatory Bail Application No.1063 of 2022 filed by applicant Pankaj and Anticipatory Bail Application No.1068 of 2022 filed by applicant Vivek stands rejected.

(S.G. MEHARE, J.)