

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

ANTICIPATORY BAIL APPLICATION NO.1080 OF 2022

1. Jagdish Rajendra Khairnar
2. Rakesh Rajendra Khairnar
3. Deepak Rajendra Khairnar
4. Arunabai Raju Khairnar ...Applicants

Versus

The State of Maharashtra ...Respondent

...
Advocate for Applicants : Mr. Pawar Hemantkumar F.
APP for Respondent/State : Mr. V.M. Kagne

...
CORAM : S.G. MEHARE, J.

DATED : 29th AUGUST, 2022

PER COURT:-

1. Heard learned counsel for the applicants and the learned APP for the State.
2. Learned APP has pointed out that the officer registering the crime has committed mistake in naming Rakesh Rajendra Khairnar as an assailant. Infact, the assailant is applicant Jagdish Rajendra Khairnar. Due to the mistake, the order granting bail has also been wrongly passed. He has fairly conceded that Rakesh Rajendra Khairnar did not assaulted the first informant. It is Jagdish Rajendra Khairnar who assaulted the first informant with iron rod and caused the grievous injury. Therefore, Rakesh Rajendra Khairnar may not be considered as the person assaulting the injured.

3. Learned counsel for the applicants has vehemently argued that there is a delay of 18 days in lodging the FIR. However, the learned APP has pointed out that immediately after the incident, the injured was admitted to the hospital and he was under the treatment. He would also point out that both the parties have lodged the report against each other. The present applicants did not deny that the incident happened on 05.07.2022. Considering this fact, at this juncture the delay of 18 days may not be considered.

4. Learned counsel for the applicants would submit that the applicant Jagdish was seriously injured in the incident and he was also admitted to the hospital. Therefore, it cannot be said that he assaulted the first informant. So far as the role of other applicants are concerned, there are no specific allegations of using the weapon by them. Therefore, anticipatory bail may be granted to them.

5. Mistakenly, the anticipatory bail was refused to the applicant Rakesh Rajendra Khairnar since in the body of the FIR, he was shown as the assailant. However, the learned APP has clarified that Rakesh Rajendra Khairnar did not assault the complainant but applicant Jagdish Rajendra Khairnar assaulted the complainant. Therefore, the order refusing the anticipatory bail to applicant Rakesh Rajendra Khairnar is reconsidered and order granting anticipatory bail to the applicant Jagdish is corrected. The happening of the incident is not disputed. Both the parties have assaulted each others

and caused serious injuries. Specific allegations have been levelled against the applicant Jagdish that he assaulted the first informant with iron rod and has caused the grievous injury. Prima facie material is available against the applicant Jagdish Rajendra Khairnar. So far as other applicants are concerned, they have played no active role and have not used any weapon. Therefore, nothing is to be recovered from them. However, the weapon is to be recovered from the applicant Jagdish. In the facts and circumstances of the case, the application deserves to be partly allowed. Hence, the following order :

ORDER

- (A) The Application is partly allowed.
- (B) Anticipatory Bail of applicant no.1 Jagdish Rajendra Khairnar is dismissed.
- (C) In the event of arrest, the applicants, (2) Rakesh Rajendra Khairnar (3) Deepak Rajendra Khairnar and (4) Arunabai Raju Khairnar, be released on anticipatory bail on the terms and conditions imposed in the order dated 12.08.2022 with an additional condition to attend the police station as and when called on written notice.

(S.G. MEHARE, J.)