

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1194 OF 2021

VASANT S/O BANSI CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. A. K. Bhosale
APP for Respondent-State : Ms. Vaishali Patil Jadhav
Advocate for Assist to APP : Mr. P. M. Nagargoje

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
17-01-2022**

**Date of Pronouncing the Order :
18-02-2022**

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.367 of 2021, registered with Pundlik Nagar Police Station, District Aurangabad, for the offences punishable under Section 326, 323, 504, 506 read with 34 of the IPC.
2. Heard learned Advocate Mr. A. K. Bhosale for applicant, learned APP Ms. Vaishali Patil Jadhav well assisted by learned Advocate Mr. P. M. Nagargoje for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that

the applicant has been falsely implicated. Name of the applicant is appearing in the FIR, and therefore, he has apprehension of arrest. The FIR is nothing but an afterthought and concocted story with malafide intention to implicate the applicant. The applicant and the informant are closed relatives. Informant had abused the wife of the applicant who has been made as accused No.2 and he had tried to outrage her modesty. She has, therefore, lodged complaint with the police station, but the police station has recorded it as non-cognizable complaint. Informant is a habitual person who is troubling the applicant's family. Earlier an incident had taken place on 07-06-2018, report in respect of that incident was lodged by the wife of the applicant under Section 452, 323, 504, 506 r.w.34 of the IPC. After the investigation, RCC No.671 of 2019 was filed against the informant and it is pending. The informant was pressurizing the applicant and his wife to take back that case. Therefore, the present FIR is nothing but the outcome of the rivalry between them. The incident is recorded in the CCTV installed at a nearby point which would definitely show that the present applicant has not assaulted to the informant as he is contending. The injury that has been received by the informant is simple in nature, and therefore, he had not gone to the civil hospital but took shelter with the private

hospital. Ingredients of Section 326 of IPC will not be attracted, so also the offence under Section 325 of IPC will not be attracted taking into consideration the alleged injuries sustained by the informant. Rest of the sections are bailable.

4. Per contra, the learned APP well assisted by learned Advocate Mr. P. M. Nagargoje for the informant submitted that there is prima facie evidence against the present applicant to show that he has caused serious injuries to the informant. There are eyewitnesses to the incident. All of them are stating that the present applicant had assaulted the informant by iron rod. The CCTV footage has been recovered and the panchanama of the transcription has been recorded. Even though there appears to be some dispute between relatives, it is required to be seen as to whether the incident as alleged has taken place on 11-09-2021 or not. The investigation is still in progress. The physical custody of the applicant is required for the recovery of the weapon.

5. At the outset, from the documents which are produced by both the parties, it can be seen that there were complaints in the past against each other by them. Even in the FIR it is stated that there is dispute in respect of boundary of the plot. Informant states that he

had gone to the plot of his ownership for inspection at about 04.00 p.m on 11-09-2021 and he says that when he was talking with his contractor, suddenly the applicant appeared holding iron rod and abusing him. He was followed by wife and children. Present applicant assaulted the informant by iron rod on the back side of the head and other accused persons assaulted him by kicks and fists blows. At this stage itself if we consider the injury certificate issued by Asian Superspeciality Hospital, dated 14-09-2021, where it appears that the informant had taken treatment on 11-09-2021 and he had sustained injury to occipital region which was 2 x 3 cm and the age of the injury was within one hour. Probable weapon used is stated to be hard and sharp object and the nature of the injury is stated to be simple. Therefore, taking into consideration the medico legal certificate, definitely the offence under Section 326 of IPC *per se* may not be attracted as well as even Section 325 of IPC.

6. Statements of witnesses could show that many of them i.e. the contractor Anil Takalkhede, that after having talks with the informant, he was proceeding towards another pole and at that time he heard some noise behind him. When he looked back, he found that two persons and two ladies were assaulting informant. Then he

went near informant and found that informant had sustained bleeding injury to his head. He does not say that he himself had seen applicant assaulting informant by iron rod. Same is the case with witness Krushna Dasu Tarote and Ganesh Kautikrao Nimbalkar, Vikki Baburao Wakode. Statement of witness Abhijeet Jadhav would show that he is the son-in-law of the informant. Though he appears to be serving in Pune, he was at Aurangabad on the day of incident, and after informant had given him phone call, he went to the spot and found his father-in-law in injured condition. Another piece of evidence which is on record is the transcript panchanama of the CCTV footage. Perusal of the same would show that the applicant was found throwing stone like object towards the head of the informant, and thereafter, he had assaulted the informant by fists. Informant was trying to rescue himself and at that time the applicant was trying to give blow with some weapon on the head of the informant. In the meantime, another lady comes and she also assaults or manhandles informant who has been identified as the wife of the applicant. Thus, it can be seen that in the panchanama also it is not stated that the act of giving blow by iron rod was complete and it was so captured in the CCTV. Therefore, taking into consideration this kind of evidence which is collected up till now,

case is made to to grant discretionary relief to the applicant. Accordingly, the application stands allowed. Hence, following order.

ORDER

- 1) Application is allowed and disposed of.
- 2) The interim protection granted by this Court on 21-10-2021 to the present applicant is hereby confirmed. In other words, in the event of arrest of applicant Vasant Bansi Chavan, in connection with Crime No.367 of 2021, registered with Pundlik Nagar Police Station, District Aurangabad, he be released on PR of Rs.30,000/- each (thirty thousand) with two sureties of Rs.15,000/- each (fifteen thousand).
- 3) He shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) He should remain present before the Investigating Officer on every Wednesday between 11.00 a.m. to 02.00 p.m. till filing of charge-sheet.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-