

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1326 OF 2021

1. Shahabaj Muktar Sayyed
 2. Arabaj Muktar Sayyed
- ... Applicants

Versus

The State of Maharashtra

... Respondent

...

Ms. Sunita G. Sonawane, Advocate for applicants.

Mr. A. M. Phule, APP for the respondent – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14.01.2022

ORDER :-

. The applicants are apprehending their arrest in connection with Crime No.206 of 2021 registered with Kopargaon Rural Police Station, Dist. Ahmednagar for the offences punishable under Sections 323, 324, 326, 143, 147, 148, 149, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Ms. Sunita G. Sonawane for the applicant and learned APP Mr. A. M. Phule for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Before proceeding further it can be noted that the FIR came to be lodged on 08.06.2021 and at that time, it was not under Section 326 of Indian Penal Code. The said Section came to be added on 14.09.2021, in the meantime, when the present applicants were arrested and released on bail by the learned Magistrate i.e. prior to the addition of Section 326 of Indian Penal Code. After the said Section has been added, the present applicants approached the learned Additional Sessions Judge for releasing them on anticipatory bail. However, that application came to be rejected on 23.10.2021 and hence, the present application has been filed.

4. Perusal of the FIR would show that it is in respect of the incident that had taken place on 08.06.2021 at about 8.30 a.m. The informant was inside the house when he heard altercations and abuses between his father Yunus Shah and the present applicants. When informant went outside he could find in all five persons including the present applicants. Yunus was telling those persons that the house in which they are residing belongs to him and they should vacate it. The accused persons got annoyed with it and started giving kicks and fists blows to Yunus suddenly. Informant – Sufiyan tried to intervene, at that time, present applicant No.2 assaulted him by scythe/dagger. Thereafter, Yunus was assaulted by both the applicants by brick on his right hand. When the

applicant No.2 was assaulting, at that time, the neighbour Johef Shah tried to intervene and, therefore, the assault of scythe hit his right hand fingers. Thereafter, the accused persons left the spot. At the cost of repetition, it is to be noted that we are now concerned with Section 326 of Indian Penal Code, because as regards the earlier offences are concerned already the accused persons were released on bail. There is no document produced on record on behalf of the prosecution that the investigating officer had filed any application for cancellation of the earlier bail and permission to arrest the applicants. Therefore, we are required to see whether the custodial interrogation of the applicants would be necessary. In this connection, it can be seen that the injury certificate of Sufiyan i.e. informant gives four injuries which are stated to be simple. Witness Johef had two injuries. They are also simple. As regards Yunus is concerned, one injury is simple and another is grievous and that grievous injury, which is in respect of dislocation of his shoulder, has prompted the investigating officer to add Section 326 of Indian Penal Code. The investigating officer has given affidavit-in-reply, however, he has not disclosed as to why he has not gone to collect the injury certificate between 18.07.2021 to 14.09.2021. No doubt, he says that he had gone to the hospital twice, but the medical officer had not issued it. There could not have been any reason for the medical officer

for not to issue the said certificate immediately or to take such a long time. However, without going into much details thereof now it is to be noted that when dislocation of the shoulder i.e. hand of the Yunus is considered of grievous injury, then as per the FIR and the statement of the eye witness, it was caused due to the assault by brick. Brick cannot be said to be a dangerous weapon *per se* and, therefore, whether it would attract ingredients of Section 326 of Indian Penal Code is a question and, therefore, the applicants deserve to be released on anticipatory bail, as the investigation is almost over. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) In the event of arrest of applicants viz., 1. Shahabaj Muktar Sayyed and 2. Arabaj Muktar Sayyed in connection with Crime No.206 of 2021 registered with Kopargaon Rural Police Station, Dist. Ahmednagar for the offences punishable under Sections 323, 324, 326, 143, 147, 148, 149, 504, 506 of Indian Penal Code, they be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicants shall attend the concerned police station as and when directed by the Investigating Officer and cooperate with the investigation.

IV) They shall not tamper with the evidence of the prosecution,
in any manner.

V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm