

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.691 OF 2022

Dhula @ Dhulaji Ramesh Shendage	...Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.Ajinkya Udane for the Applicant.
Mr.N.B. Patil, APP for the Respondent-State.
Mr.Prashant D. Raul for the Intervenor.

CORAM : C.V. BHADANG, J.

DATE : 15 MARCH 2022

P.C.

. The Applicant, apprehending arrest, in connection with the investigation of Crime No.111 of 2022 registered with Shirur Police Station, under Section 143, 147, 148, 307, 326, 504, 506 of the Indian Penal Code, is seeking anticipatory bail.

2. The Applicant is one of the co-accused in the said crime which is registered on the basis of the complaint dated 16 February 2022 lodged by Sau Mangal Manik Waghmode.

3. I have heard the learned counsel for the parties. Perused record.

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4. As per the first informant on 15 February 2022 at about 11.00 a.m. there was a minor quarrel between Sukhdeo son of the informant and Raghunath Shendge. On 16 February 2022 at about 8.30 a.m. the informant claims that the accused Sandhyabapu Zumbar Shendage and three to four other persons had come to her house stating that the dispute would be resolved amicably. However, at 10.30 a.m. on the same day the Applicant along with co-accused is alleged to have assaulted Sukhdev by means of an iron rod as well as a stick. It is also alleged that the co-accused Sandhyabapu Shendage brought a sword and abused Sukhdev. When the informant intervened all the assailants fled from the spot. In the incident Sukhdev sustained grievous injury on the back and leg and he was taken to the rural hospital Nahaware and thereafter Vighnaharta Hospital. Sukhdev had sustained fracture on the right leg.

5. The learned counsel for the Applicant submitted that only allegation against the Applicant is of an assault by a wooden stick. He submitted that the material allegation of the assault by the iron rod and an attempt by a sword is made against the co-accused Sandhyabapu Shendage and Raghu Shendage. He therefore submitted that there is no recovery which can be made from the Applicant and the custodial interrogation of the Applicant is not necessary.

6. The learned Additional Public Prosecutor has pointed out that all the assailants were acting in furtherance of their common intention and looking to the nature of the assault and the nature of the injuries sustained by Sukhdev a clear attempt to commit murder can be spelt out. He pointed out that this Court has refused to grant anticipatory bail to Sandhyabapu Shendage and Raghu Shendage.

7. The learned counsel for the Applicant submitted that the Applicant was not present at the spot as the Applicant was at a distance of about 17 kilometers from the spot of the incident in a religious function. In support of the same the Applicant has filed affidavits of Kondiba Kisan Gore and Vithal Pandurang Lakade (page 30 and 32). He has also requested to the Investigating Officer to obtain the CDR in order to demonstrate the location of the Applicant.

8. The learned counsel for the Applicant also submits that there is a cross FIR filed arising out of the incident.

9. I have considered the circumstances and the submissions made. *Prima facie* the Applicant appears to be named in the FIR. The FIR names in all six accused including the present Applicant who had assaulted injured Sukhdev. The allegation is that the co-accused Sandhyabapu Shendage has

assaulted by iron rod, while the Applicant had assaulted by a stick. Having regard to the nature of the allegations in my considered view, role attributed to the Applicant cannot be segregated on the basis of the use of the wooden stick only as rightly submitted by the learned Additional Public Prosecutor the evidence shows that the assailants were acting in furtherance of the common intention.

10. This Court has disinclined to grant anticipatory bail to Sandhyabapu Shendage.

11. The injured is shown to have suffered a fracture of tibia of right leg. The City scan of the brain shows haematoma under the scalp which are shown to be grievous injuries.

12. The contention in the nature of an alibi, on the basis of the affidavits filed by the Kondiba Gore and Vitthal Lakade cannot *prima facie* be examined at this stage, inasmuch as a plea of alibi has normally to be established by the accused at the trial. It is necessary to note that the burden to establish plea of alibi is on the accused. Further more, the plea of alibi is based on the contention that the Applicant was at a distance of 17 kilometers from the spot of the incident which cannot be said to be such a distance in order to show that it was physically impossible for the Applicant to be at the spot of incident.

13. Thus no case for grant of bail is made out. The Criminal Application is accordingly rejected.

14. It is however, made clear that the observations herein are *prima facie* in nature, only for the purpose of deciding the Application for Anticipatory Bail. The observations shall not be binding at any subsequent stage of consideration of an Application for regular bail, if any, or the trial.

C.V. BHADANG, J.