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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.107 OF 2023

Pandurang Shankar Dalvi

APPLICANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

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Mr. K. N. Shermale, Advocate for the applicant

Mr. A. A. Jagatkar, APP for respondent - State

Mr. Sudheer R. Zambare, Advocate for the informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th FEBRUARY, 2023

ORDER :

1. The applicant apprehends arrest in Crime No. 10 of 2023 registered with Ahmednagar Taluka Police Station, Ahmednagar for offence punishable under sections 326, 504, 506 of the Indian Penal Code.

2. FIR is lodged by Gorakshnath Davli stating that on 31st December, 2022, at 5.00 p.m., he was in his house. He heard noise of breaking of glass of Mahindra vehicle No. MH-16/BZ-4649, parked in front of his house. When he came out, he saw the applicant breaking the glass. When he tried to prevent the applicant, the applicant assaulted him on his forehead with some

hard object. Thereafter, the applicant gave stick blows on his right rib and left knee. The applicant abused and threatened him with life. The informant became unconscious. Father of the informant called Dr. Mhaske, he being their acquaintance. On advise of Dr. Mhaske, the informant was admitted in Mhaske Hospital, at Ahmednagar and started receiving treatment. On the basis of this statement of the informant, recorded in Mhaske Hospital, FIR was registered on 2nd January, 2023.

3. Heard learned advocate for the applicant, learned Additional Public Prosecutor and the learned advocate for the informant. Perused the investigation papers.

4. Learned advocate for the applicant, submits that false and concocted case is lodged against the applicant with the help of Dr. Mhaske, who is related to the informant. Present FIR is lodged as counter blast to the FIR lodged by the applicant against the informant, in which the informant could not get protection up to this Court. Due to earlier enmity, the applicant is implicated in the present crime. FIR is lodged due to grudge and *mala fides*. There is strong possibility that Dr. Mhaske, with a view to help the informant, issued fabricated medical certificate in favour of the informant. The applicant was at Kedgaon at the time of the incident and not at village Sonewadi.

Allegations made in the FIR are vague and cryptic and do not constitute any offence. The Sessions Court has failed to appreciate the grounds raised by the applicant, in the proper perspective while rejecting the anticipatory bail application filed by the applicant. He submits that the incident has taken place on 31st December, 2022 whereas FIR is lodged on 2nd January, 2023 and the delay is not explained, which creates doubt in the prosecution case.

5. Learned Additional Public Prosecutor and the learned advocate for the informant, on the other hand, strenuously opposed the application. It is submitted that the weapon used in the crime is yet not recovered.

6. On going through the investigation papers, it is clear that on the basis of the statement of the informant, recorded in hospital, the offence is registered on 2nd January, 2023. In the FIR, the informant has stated that he became unconscious due to the assault by the applicant and he was admitted in Mhaske Hospital, where he was taking treatment. Spot Panchanama corroborates the allegations in the FIR, as Mahindra vehicle was found parked next to the compound of the house and its rear side glass was broken. Glass particles were found lying on the ground. Injury certificate shows that the informant has suffered

following injury -

"cutting injury due to sharp object (chopper / kukri etc.)"

7. In the supplementary statement, recorded on 2nd January, 2023 itself, the informant has stated that the applicant attacked him with kukri. Father of the informant, who is an eyewitness to the incident, has supported the allegations made in the FIR. One more witness has witnessed the assault by the applicant on the informant. Weapon used in the crime is yet not recovered. Custody of the applicant is, therefore, necessary for effective investigation and for recovery of the weapon. The applicant, therefore, does not deserve discretionary relief of anticipatory bail. The application is, therefore, rejected.

8. At this stage, learned advocate for the applicant requests for continuation of interim protection granted to the applicant, for a period of four weeks. For the reasons stated in the order, this is not a fit case to continue the interim protection. The prayer for continuation of interim protection is rejected.

[NITIN B. SURYAWANSHI]
JUDGE