

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

ANTICIPATORY BAIL APPLICATION NO.304 OF 2023
WITH APPLN/982/2023 IN ABA/304/2023

LIMBAJI DHONDIRAM @ DHONDIBA GHODKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. B. S. Bhale
APP for Respondents: Mr. S. N. Morampalle
...

CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2023

PER COURT :

1. These Applicants apprehends arrest in connection with with C.R. No. 17 of 2023 registered with Jalkot Police Station for the offences punishable under Sections 307, 326, 324, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code.

2. Informant is wife of Applicant No. 1 states that her husband is a serviceman. She narrated incident occurred on 14.01.2023 at about 09.00 p.m when she made complaint to her husband against her father-in-law and brother-in-law, they assaulted and abused her. It is further alleged that her husband brought petrol in a bottle and poured it on her person and brother-in-

law came with matchstick in his hand to set her on fire. It is stated that as her sister-in-law i.e., wife of Applicant No. 2 intervened, they could not set her on fire. It is further stated that this incident was informed to the parents and therefore, her parents came to her matrimonial home. It is alleged that at that time present Applicants and co-accused assaulted her father and relatives with sticks and rod. With these averments, report came to be lodged.

3. Learned Counsel for the Applicants states that there is delay caused in lodging of FIR as the incident in question allegedly occurred on 14.01.2023 whereas report came to be lodged on 17.01.2023. He further states that even the learned Sessions Court while entertaining application of the co-accused has observed that it is not the case for the application of Section 307 of IPC. It is contended that considering delay caused in lodging of FIR, the incident of alleged attempt by the Applicants to set informant on fire cannot be believed. As regards the allegations about causing assault on the father of the informant and others, it is submitted that having regard to the

nature of injuries caused to the father of informant, it is not the case wherein offence punishable under Section 307 or 326 can be attracted.

4. Learned APP as well as learned Counsel for the informant opposed the said submissions by stating that there is specific averment in the FIR in respect of an attempt being made by the present Applicants to set informant on fire. The attention of the Court is drawn to the statement of informant recorded under Section 164 of Cr.P.C. wherein consistent statement is made by her before learned J.M.F.C. As regard injury certificate, it is pointed out that in all three persons sustained injuries in the said incident out of which Shyam Gaikwad had sustained grievous injury.

5. In every case the delay caused in lodging of the FIR is not fatal to the prosecution and that the informant cannot be disbelieved at this stage. Perusal of the FIR specifically shows that informant made complaint to her husband against her father-in-law and brother-in-law and hence she was abused and assaulted with fist and kick blows. She further states that her husband broke her mobile phone and thereafter brought

petrol in the bottle from his motorcycle. She alleged that her in-laws caught hold of her and Applicant No. 1 husband poured petrol on her person. There is a specific statement that Applicant no. 2 who is brother-in-law of the informant had brought matchstick in order to set her on fire. It seems that only because of intervention and obstruction caused by the wife of the brother-in-law of the informant, informant was not actually set on fire. Apparently, offence of attempt to kill is made out against Applicants.

6. As regards incident in which father and relatives of the informant were assaulted, there is specific averment in the FIR about use of stick and rod to cause assault on them. This statement is not only supported by the statement of witnesses but also gets support from the medical certificates placed on record. It can be seen from those medical certificates that though simple injuries are caused to two injured persons, however, in fact number of injuries are seen on their person. One injured sustained grievous injury. This *prima facie* indicates that provisions of Section 326 of IPC is rightly invoked in this case.

7. It was also sought to be argued by the learned Counsel for the Applicants that in the said incident Applicant no. 1 had also sustained injuries. The certificate filed on record further indicates that it was nothing more than abrasion. The said abrasion is likely to be caused even to the assailants during the course of causing assault on other person.

8. Having considered the aforesaid facts, there is specific record indicates that it is the case wherein informant tried to be set on fire and that her father and relatives were assaulted causing grievous injury to one of the injured persons. In such circumstances, when there is enough material on record to indicate involvement, the Applicants are not entitled for protection. Hence, application stands dismissed.

9. At this stage, learned Counsel for the Applicants seek extension of interim relief granted to the Applicants for the period of 30 days.

10. Learned APP opposed the said request on the ground that the offence is serious and immediate

investigation is necessary.

11. Perusal of the interim relief shows that the said order was passed only on the ground that the Applicant No. 1 is serviceman. In any case, since some relief granted in favour of the Applicants, interim relief to remain inforce till 07th July, 2023.

12. Pending application, if any, is also disposed of.

(R.M. JOSHI, J.)

Malani