

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

ANTICIPATORY BAIL APPLICATION NO.429 OF 2023

**SHIVAJI BAPURAO GAIKWAD @ SHIVAJI BABURAO GAIKWAD
AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr. S. S. Dambe, Advocate for the applicants
Mr. S. N. Morampalle, APP for the respondent/State
Mr. S. R. Kedar, Advocate for assist to PP.

**CORAM : R. M. JOSHI, J.
DATE : 19th JUNE, 2023**

P.C. :-

1. Applicants apprehend arrest in connection with CR No. 138/2023 registered with Kaij Police Station, District Beed for the offences punishable under Sections 327, 427, 452, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. It is the contention of the informant that on 3rd March, 2023 at the bus stand he commented on the quality of the road and its repair by stating that the amount was received but no repair work is done. It is further stated in report that on 05/03/2023 at 7.30 pm when he was taking dinner applicants came to his house and assaulted him by saying as to how he could allege that without constructing the road he received any money. It is further alleged that Balu Garbade took away cash of

Rs.2,39,496/- which was kept on the cot in the house. It is further alleged while leaving the spot damage is caused to the car of the informant.

3. Learned counsel for the applicants states that the contention of the informant is apparently false as per the general diary entry No.2 shows the car of informant was parked on road causing obstruction to the traffic and hence it was seized by the police. He further states that there is delay in lodging FIR and that having regard to the dispute between them the causing of false report cannot be ruled. It is further stated that there is further entry in the general diary maintained by the concerned police station about their being settlement arrived at between the parties and hence they not lodging complaints against each other. It is therefore submitted that this is a case of false implication and therefore applicants deserve to be protected from arrest.

4. Learned APP opposed the application by submitting that the investigation carried out till date indicates that the incident of assault has occurred and that there is evidence to show that the informant was having received cash on sale of Soyabean. Learned counsel appearing for the informant states that the documentary evidence about the sale of Soyabean to the trader is sufficient to show that he was possessing the

cash with him. As far as the delay in lodging of the FIR is concerned it is contended that from 8th March, 2023 to 10th March, 2023 in the police station however the police has refused to record his report. It is submitted that the delay has been caused as the informant was hospitalized still 6th March, 2023.

5. There is no dispute about the fact that there was a quarrel between the parties. No doubt the informant claims that still 6th March, 2023 he was hospitalized and therefore the non filing of the report till that day may be justified. However it does not stand to any reason as to why no immediate report was lodged thereafter. On the contrary there is documentary evidence on record to suggest that on 09/03/2023 the informant and applicant came to the police station and informed to the police about the settlement between the parties. This Court has in order to find out as to whether there is some material on record to indicate that the informant had been to the police station on 8th March 2023 and 10th March, 2023, to appreciate authenticity of his contention about going to police station but police refusing to register offence.

6. Learned APP after obtaining instructions from the Investigating Officer who is present before this Court, states that the CCTV footage of the police station does not show the presence of the

informant and the police station on 08th March, 2023. Considering this fact *prima facie* no substance is found in the contention of the informant he had been to the police station but police refused to record complaint. Thus, in view of the fact that there is a report recorded by the police about the compromise between the parties, this Court finds substance in the contention of the counsel for the applicant that it could be a case of false implication.

7. As regards the alleged theft of Rs. 2,39,496/- is concerned, perusal of the record indicates that the document placed on record to indicate the sale of Soyabean is not even on the letterhead leave apart showing GST number, which is mandatory for any transaction of this nature. This Court therefore finds it difficult to *prima facie* hold that there is any substance in the contention of the informant about commission of theft. In view of fact that there is delay in lodging FIR and with previous enmity between parties, the possibility of false implication is not ruled out. In the circumstances, the application is allowed in terms of interim order dated 28th March, 2023.

(R. M. JOSHI, J.)

ssp