

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

ANTICIPATORY BAIL APPLICATION NO. 496 OF 2023

Abdul Kaleem Ahmed Abdul Raheem ..APPLICANT

VERSUS

State of Maharashtra and Another ..RESPONDENTS

**WITH
ANTICIPATORY BAIL APPLICATION NO. 447 OF 2023**

1. Shaikh Abdul Wajed Abdul Raheem
2. Shaikh Abdul Naeem Abdul Raheem ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO. 449 OF 2023**

1. Sachin Pandurang Pachpunje
2. Ravi Pandurang Pachpunje
3. Sunil Pandurang Pachpunje ..APPLICANTS

VERSUS

State of Maharashtra ..RESPONDENT

....

Mr. Joydeep Chatterji, Advocate for applicant in ABA/496/23

Mr.V.A. Mundhe, Advocate h/f Mr. S.S. Thombre, Advocate for applicants in ABA/447/23

Mr. S.B. Rajebhosale, Advocate for applicants in ABA/449/23

Mr. A.A. Jagatkar, A.P.P. for respondents

Mr. V.P. Latange, Advocate for assist to A.P.P.

....

CORAM : R.G. AVACHAT, J.

DATED : 18th APRIL, 2023

PER COURT :

1. These applications under Section 438 of Code of Criminal Procedure are being decided by this common order since the applicants therein claim to have an apprehension of being arrested in connection with Crime No. 70 of 2023 registered with New Mondha Police Station, Dist. Parbhani for the offences punishable under Sections 307, 143, 147, 148 and 506 read with Section 149 of the Indian Penal Code ('I.P.C.').

2. Heard. Perused First Information Report ('F.I.R.') and related police papers.

3. F.I.R. has been lodged by mother of the injured on 03rd March, 2023 in relation to the incident that took place on 05th March, 2020. It has been averred in the F.I.R. that her son - Sayyed Abdulla had gone to fetch cold-drink by 09:30 p.m. The shop wherefrom the cold-drink was to be fetched was at Rahul Nagar Pati, Parbhani. In front of the said shop the applicants assaulted the informant's son with rafter and iron pipe indiscriminately. Someone rushed to the house of the informant to relate her about the same. One Akshay Dhabdage and Rohit Dahale rushed the injured to Civil Hospital, Parbhani. The informant rushed to the hospital to find her son unconscious. It was also found that he was robbed of his 22 grams gold chain and cash of Rs.7,000/-. The informant told the Medical Officer there

and even at police booth in the premises of the hospital that her son has been assaulted. It is further alleged in the F.I.R. that the Medical Officer at Civil Hospital, Parbhani did not attend the injured with due care. He was, therefore, rushed to Ghati Hospital, Aurangabad on 09th March, 2020. He was an indoor patient there for one day.

4. The informant had also communicated in writing to the Superintendent of Police, Parbhani immediately after the incident. Cognizance of her report was not taken by the police officials. She had, therefore, approached State Human Rights Commission, Mumbai. An enquiry took place before the State Human Rights Commission. The officer there had concluded that the police officials, in spite of there having been cognizable offence, did not record the F.I.R. The concerned police officials have been blamed in the report. A direction was issued to the concerned police station to register the crime. Thus, the crime came to be registered.

5. Learned counsel for the applicant would submit that the F.I.R. has been lodged about three years after the alleged incident. A petty incident has been blown out of the proportion. The medical papers of the injured were brought to the notice of this Court. According to learned counsel, after grant of interim protection, the applicants had appeared before the concerned investigating officer and even co-operated with him. They, therefore, urged for grant of applications.

6. Learned A.P.P. would, on the other hand, submit that when the police officials had been to the residence of the informant to record statements of the injured and his sisters, they were reported to be out of town. When a message was given to one of the female members to ensure that they would visit the police station to give their statements, it was informed to the police that females would not attend the police station. The officer there visited the informant's residence again and recorded her statement. Learned A.P.P. would further submit that for recovery of weapons, custody of the applicants is required.

7. Learned counsel for the informant would, on the other hand, submit that nobody was supporting the informant and her family members. The police officials and Medical Officer at Civil Hospital, Parbhani were also averse. According to him, the informant had, therefore, no option but to approach State Human Rights Commission, Mumbai. Order dated 20th December, 2022 passed by Superintendent of Police, State Human Rights Commission, Mumbai was brought to the notice of this Court, wherein it has been observed that the police officers of the concerned police station did not record the F.I.R. in spite of there being a cognizable offence. The police officials have been blamed in that regard. The F.I.R. has been recorded on the directions of the State Human Rights Commission, Mumbai. Attention of this Court was also drawn to a communication dated 16th March, 2020 made

to the Superintendent of Police, Parbhani wherein the incident was narrated with a request to register the crime. Photographs of the injured have also been relied on to suggest seriousness of the injuries he suffered. A receipt of purchase of a gold chain has also been placed on record. According to learned counsel, some of the applicants have criminal antecedents. He, therefore, urged for rejection of the applications.

8. Considered the submissions advanced. Perused the papers on record. This Court is also in agreement with learned counsel for the informant. It appears that the officials of the concerned police station did not record the F.I.R. It would be impracticable to imagine when a person is brutally assaulted, none of his family members approached the police station to report the incident. The photographs of the victim also suggest him to have suffered serious injuries. There is also communication dated 16th March, 2023 to indicate the informant to have made a communication to the Superintendent of Police, Parbhani. It appears that everything failed on deaf ears of the police officials concerned.

9. It has been now been three years since the incident took place. The injury certificate issued by the Civil Hospital post registration of the crime suggest the injured to have suffered injuries simple in nature. Whether the injury certificate is genuine is a big question. There are other medical

papers on record to suggest the injured was an indoor patient for 3-4 days at Civil Hospital, Parbhani. He was then shifted to Ghati Hospital, Aurangabad on 09th March, 2020 and discharged on the following day. Discharge summary of the injured records as follows :-

“no h/o vomiting, no h/o loss of consciousness, no h/o convulsions, no h/o ENT bleed, no h/o hematemesis/ melena, no h/o hemoptysis, no h/o burning micturition,

DIAGNOSIS

Alleged history of physical assault with blunt trauma head and neck with no radiological abnormality managed conservatively”

10. True, that in the F.I.R. it has been alleged that the injured was robbed of a gold chain and cash of Rs.7,000/-. Learned counsel for the applicants were however, justified in contending that now it becomes a practice to incorporate such allegations in the F.I.R. so as to ensure culprits are arrested and remanded to the police custody under the pretext of recovery of stolen articles.

11. After appreciation of entire material on record, this Court is in agreement with the submissions made by learned counsel for the informant that the police officials of the concerned police station and the Medical Officer of the Civil Hospital, Parbhani deliberately neglected grievance of the informant and the injured. It is further reiterated that it has been about three years since the incident took place. It would, therefore, not be desirable to

refuse to grant the applicants anticipatory bail. The observations in this order are prima facie in nature. Trial Court shall not be influenced thereby.

12. In view of above, applications are allowed. Orders dated 06th April, 2023 and 29th March, 2023, granting the applicants interim anticipatory bail are hereby made absolute. Duration of the anticipatory bail is until filing of the charge-sheet. The applicant shall appear before the investigating officer, as and when required for the investigating purpose. The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD