

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

ANTICIPATORY BAIL APPLICATION NO.524 OF 2023

**SHAIKH MUKHTAR SHAIKH NABI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. A. K. Bhosle, Advocate for the applicant
Ms. R. P. Gaur, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 06th JUNE, 2023

P.C. :-

1. Applicant is apprehending arrest in connection with CR No. 34/2023 registered with MIDC Waluj Police Station, Aurangabad for the offences punishable under Sections 307, 323, 143, 147, 148, 149, 504 of IPC, Section 4/25 of Arms Act and Section 135 of Maharashtra Police Act.

2. Yogesh Mhaske gave report to the police stating that on 13th January, 2023 at about 11.30 am when he came to Hotel Jaibhavani, Umar Shaikh started abusing and threatening him owing to the previous dispute between them. It is further alleged that Umar gave a phone call to his father Muktar Shaikh and called him to the spot. Thereafter Muktar along with some other persons came to the spot. It is further alleged that Muktar i.e. present applicant caused assault on his head with sword.

3. Learned counsel for the applicant states that though there is mention in the report about the assault being caused by present applicant, however during the course of investigation it was revealed that injury caused to the head of informant was not by Muktar but by the co-accused with the help of piece of a tile. It is submitted that there is no overtact alleged against the present applicant in the crime in question and that considering the isolated simple injury caused to the informant, offence punishable under Section 307 is not attributed in the present case.

4. Learned APP opposed the said contention and it was pointed out that the possibility of the informant having committed error in naming applicant as assailant cannot be ruled out, however, that cannot become a ground for grant of bail.

5. Perusal of the investigation papers reveal that the informant had sustained single injury on his head. The statement of the witnesses further reveals that the said injury was not caused by sword or any other weapon and it is also not attributed to the present applicant.

6. Perusal of the first information report shows that owing to previous dispute co-accused Umer had abused and threatened the

informant. Thereafter other accused persons were called to the spot. If the case of the prosecution is accepted as it is the intention of the assailants to kill the informant is absent. It does not stand to any reason as to why only a single injury was caused to the informant though as per the case of the prosecution the all accused were armed with the weapons. This at least *prima facie* does not support attribution of provisions of Section 307 of IPC to the present case. Since admittedly the weapon allegedly possessed by the applicant was not used for the assault and also in view of the fact that the said sword is already recovered at the instance of the co-accused Umer, nothing survives for any recovery from applicant. Thus, his custodial interrogation is not essential. In the circumstances, application deserves to be allowed. Hence the order.

ORDER

. Application is allowed on the same terms of interim order dated 12th April, 2023.

(R. M. JOSHI, J.)

ssp