

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 569 OF 2023

Shivaji Ramrao Kejgir & another

Applicants

Versus

The State of Maharashtra

Respondent

Mr. M. V. Salunke, Advocate for the applicants.

Mr. S. N. Morampalle, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2023.

PER COURT :

1. Applicants are apprehending arrest in connection with Crime No. 31/2023 registered with Malkoli Police Station, Tq. Loha, Dist. Nanded, for the offences punishable under Sections 307, 323, 504 read with Section 34 of the Indian Penal Code.

2. On 11th March, 2023, Maroti gave information to the police about occurrence of the incident on 9th March, 2023 stating that applicant No. 1 was to reconcile the dispute between Madhav and Sanjay. For that purpose, he alongwith Sanjay went to the house of Madhav. He further states that they had discussion there and thereafter there was incident of abusing and that Sanjay

instigated to beat the informant. It is alleged that applicant No. 1 caught hold of the hands of the informant and Vitthal assaulted him on his head with iron rod. Allegation against applicant No. 2 Madhav is about assaulting the informant with fist blows.

3. Learned counsel for the applicants states that so far as applicant No. 2 Madhav is concerned, his involvement in assault cannot be accepted. So far as applicant No. 1 Shivaji is concerned, considering the entire record, common intention cannot be attracted to this applicant. He submits that from the First Information Report, it reveals that the informant was instrumental in attempting settlement in the dispute. He further states that there is nothing on record to indicate that there was any preparation of crime and the iron rod was carried by the accused with them. Thus, it is his contention that having regard to the incident occurred at the relevant time, it cannot be said with certainty that applicant No. 1 had shared common intention with co-accused Vitthal. He further states that nothing is to be recovered at his instance and that his custodial interrogation is not necessary. He further states that applicant No. 1 has no criminal antecedents.

4. Learned APP opposed the application by submitting that there is specific statement made in the First Information Report about applicant no. 1 catching hold of hands of the informant and Vitthal assaulted him with iron rod. This statement gets corroboration by the statements of other witnesses. It is also stated that there is medical certificate showing injuries caused to the head of the informant.

5. As far as applicant No. 2 Madhav is concerned, from the First Information Report itself it is clear that he cannot be held responsible for causing injuries on the head of the informant. Thus, offence punishable under Section 307 of the Indian Penal Code is not applicable against him. As far as applicant No. 1 is concerned, though it appears from the First Information Report that he caught hold of the hands of the informant and co-accused Vitthal assaulted him with iron rod. But in order to appreciate prima facie as to whether applicant No. 1 shared common intention with the co-accused Vitthal, it is necessary to consider facts as appearing from the First Information Report. First Information Report itself indicates that applicant No. 1 is one who had taken initiative for settlement of dispute between Madhav and Sanjay. Thereafter there

was discussion going on between the parties in courtyard of house. Later on, there was abusing. There is no allegation against applicant No. 1 that he instigated any one to cause assault. Merely because, he caught hold of the hands of the informant, it cannot be presumed that the same was done with intention to facilitate co-accused to cause assault on the head of the informant. Pertinently, accused Vitthal did not carry any weapon with him. Meaning thereby, the iron rod at spot was used to cause assault. Thus, it is difficult to accept that applicant shared common intention with him.

6. Having regard to the facts and circumstances of the case, and as applicant No. 1 has no criminal history, it is fit case to protect his liberty. Nothing is to be recovered at the instance of the applicants. Hence, application is allowed in terms of the interim order.

(R. M. JOSHI)
Judge

dyb