

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

ANTICIPATORY BAIL APPLICATION NO.753 OF 2023

**YOUSUF MOHAMMAD SHAIKH @ MISBAH PATEL
VERSUS
THE STATE OF MAHARASHTRA**

Mr. F. V. Shaikh, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 22nd JUNE, 2023

P.C. :-

1. Heard.
2. Applicant apprehend arrest in connection with Crime No. 74/2023 registered with Jawahar Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 143, 147, 149, 323, 326, 324, 504 of the IPC.
3. Informant has alleged that on 9th April, 2023 at about 6.00 pm when he was going on his motorcycle bearing No. MH 28 968. He further states that at that time one boy has told him to drive his two wheeler carefully and he abused and assaulted informant. Thereafter the applicant came to the spot with sharp edged weapon and assaulted informant. He also claims that 5 to 7 unknown persons also caused

assault on him.

4. Learned counsel for the applicant states that the possibility of false implication of the applicant cannot be ruled out. He drew attention to the Court to the observations made by the learned Sessions Court stating that the informant was never admitted in the hospital and against doctor's advice without taking stitches on the wound he left the hospital. Thus, according to him it is not the case for applying provisions of section 326 of IPC.

5. Learned APP opposed the said contentions relying upon the statement of the eye witness who claims that he was present along with informant at the relevant time and that the present applicant with weapon has caused assault on informant. She also states that though it is not stated in the FIR that the witness was accompanying him however supplementary statement is recorded to that effect. To support this submission he placed on record medical certificate which indicates that there was grievous injury caused by hard and blunt object to the nose of the informant coupled with another injury over left eyebrow. It is thus contended that the first information report gets duly supported by the statement of witness as well as the injury certificate and hence it is not case for grant of pre-arrest bail.

6. Perusal of the first information report shows that the applicant was alone when he went to the spot on his motorcycle. It further reveals that initially one boy abused and assaulted him. After this assault it is claimed that the applicant came to the spot with sharp edged weapon and assaulted informant. After the said assault 5 to 7 persons came and 3 also also assaulted the informant. This indicates that number of persons have caused assault on the informant and on the basis of first information report itself it cannot be said that all of them came together the spot and shared common object. In such circumstances it would be necessary to see as to whether the injury certificate supports the allegation in the first information report against the applicant herein. Perusal of the injury certificate shows that the CLW caused to the left eyebrow is simple injury. As far as the injury caused to the nose which grievous one is not caused by sharp edge weapon but it is caused by hard and blunt weapon. There is no allegation against present applicant that he used any hard and blunt object to cause assault on the informant. In view of the fact that number other persons have also assaulted the informant, the possibility of the said injury being caused to the informant by some other person cannot be ruled out. As far as the statement of the witness who claims have been with the informant at the relevant time is concerned, it is recorded on 11/04/2023 i.e. after the issuance of injury certificate. Pertinently, there is no

reference in the first information report about any one else accompanying informant at the relevant time. At this stage this Court finds no reason to rely upon the supplementary statement of informant and statement of the alleged eye witness, recorded belatedly.

8. Having regard to the aforesaid facts doubt is created as to the exact role played by the applicant in this crime. In any case the grievous injury caused to the informant cannot be attributed to the present applicant. Hence application is allowed.

ORDER

(i) In the event of arrest of applicant in connection with Crime No. 74/2023, registered with Jawahar Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 143, 147, 149, 323, 326, 324, 504 of IPC, he shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

(ii) He shall attend the concerned police station once in a week.

(iii) He shall not contact the witnesses directly or indirectly.

(iv) He shall not interfere with the evidence in any manner whatsoever.

(v) He is further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI, J.)

ssp