

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 767 OF 2023

Sanket s/o Baban Choudhary & another Applicants

Versus

The State of Maharashtra Respondent

Mr. V. D. Salunke, Advocate for the applicants.
Mr. G. O. Wattamwar, APP for the State.

CORAM : R. M. JOSHI, J.
DATE : 5th JUNE, 2023.

PER COURT :

1. Applicants are apprehending arrest in connection with Crime No. 107/2023 registered with Ashti Police Station, Dist. Beed, for the offences punishable under Sections 307, 336, 324, 327, 504 and 506 read with Section 34 of the Indian Penal Code.

2. Learned counsel for the applicants states that initially offence was not registered under Section 307 of the Indian Penal Code but it was registered under Section 326 of the Indian Penal Code with other offences. He drew attention of this Court to the First Information Report wherein a statement is made by the informant

that applicant No. 1 assaulted him on his head with rod. By referring to the report of the Investigating Officer, it is stated that in the supplementary statement, informant has stated about dogging of assault by iron rod on his head. Thus, according to him, there is no case made out for offence punishable under Section 307 of the Indian Penal Code. It is further stated that the possibility of informant having sustained injury when he fell down cannot be ruled out.

3. Learned APP opposed the said contention with submission that prima facie injury certificate shows that fracture was caused to the knee which was result of the assault caused on the injured by applicant No. 2. As far as applicant No. 1 is concerned, reference is made to the injury caused to the occipital region, which according to the prosecution, attributes to the assault by iron rod on the head of the informant. Learned APP has also opposed the application on the ground that there are criminal antecedents against the applicants. This aspect is rebutted by learned counsel for the applicants stating that the alleged antecedents pertain to the year 2014.

4. No doubt, there is some inconsistency in the statement of the informant while recording First Information Report and supplementary statement. However, prima facie, material on record indicates that the informant had sustained fracture to his knee which can be attributed to the assault caused by applicant No. 2. Insofar as applicant No. 1 is concerned, though the injury caused to the occipital region is simple in nature, having regard to the fact that both the accused came together with iron rod and hockey stick, the preparation for commission of crime is apparent. Assault by both applicants indicates their common intention and at this stage, Section 34 of the Indian Penal Code is seem to be rightly invoked herein.

5. Having regard to the First Information Report and the statements of witnesses coupled with the injury certificate, this Court is of the view that there is prima facie involvement of the applicants in this crime on sharing common intention. There is use of weapons in the commission of assault and as rightly contended by the learned APP, custodial interrogation of the applicants is necessary for recovery of the same. Hence, application stands dismissed.

6. Pending application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb