

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

ANTICIPATORY BAIL APPLICATION NO.770 OF 2023

BABASAHEB S/O NARHARI SUKALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. D. M. Shinde
APP for Respondents: Mr. S. P. Sonpawale
Advocate for Assist to P.P.: Mr. D. S. Patil

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CORAM : R.M. JOSHI, J

DATE : JULY 03, 2023

PER COURT :

1. Mr. D. S. Patil states that he is instructions to appear on behalf of informant to assist to P.P.
2. Having regard to the nature of offence, permission is granted.
3. Applicants apprehend arrest in connection with Crime No. 122 of 2023 registered with Washi Police Station, Dist. Osmanabad for the offences punishable under Sections 307, 504, 324 read with Section 34 of the Indian Penal Code.
4. Informant reported an incident occurred on 22nd April, 2023 at around 06.00 pm wherein he was assaulted by Applicants and co-accused. It is alleged that

Applicant No. 1 caused assault on his head with axe and he sustained bleeding injury. Allegation is made against co-accused of causing assault on his hands and legs with stick.

5. Learned Counsel for the Applicants states that intention of the Applicant No. 1 to kill is absent in view of causing of minor injury to the informant. It is submitted that in the same incident Applicant No. 1 in fact sustained injury. This is probably the case of fight between two parties and the injury has been inflicted therein. As far as Applicant No. 2 it is submitted that in any case offence punishable under Section 307 of IPC has no application.

6. Learned APP and learned Counsel appearing for informant opposed the application by submitting that there is specific allegation against Applicant No. 1 of using axe to cause injury on the vital part of the informant i.e., head. It is submitted that though simple injury is caused but having regard to the nature of weapon used and the assault caused on the vital part of the body, the offence punishable under Section 307 of IPC gets attracted.

7. Learned Counsel for the informant states that Applicants have misused liberty granted by this Court and that the informant is threatened.

In response to same, learned Counsel for the Applicant No. 1, on instructions, makes statement that Applicant No. 1 will stay away from the village Sonogaon till filing of the charge-sheet.

8. Though, there is allegation against present Applicants of causing assault on the head of the informant but it needs to be seen that in the same incident Applicants had also sustained injuries and for that reason he was hospitalized for three days. Pertinently, if the Applicants had intended to cause death of the informant, there was possibility for him to inflict further blows with axe. No such acts appears to have been done by the Applicants. In such circumstances, at this stage, this Court finds substance in the contention of the Applicants to injuries could have caused in the fight or scuffle between parties and that intention to kill informant is absent.

9. Undertaking given by the learned Counsel for

the Applicants on behalf of Applicant No. 1 of not entering the jurisdiction of village Sonegaon will take care of apprehension of informant of pressurizing of witnesses

10. In view of above, Application is allowed in terms of interim order dated 16th May, 2023 with a condition that Applicant No. 1 – Babasaheb Narhari Sukale not to enter village Sonegaon till filing of the charge-sheet, as per undertaking given to this Court.

(R.M. JOSHI, J.)

Malani