

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.805 OF 2023
WITH APPLN/1998/2023 IN ABA/805/2023

RAJABAHADUR S/O JIYARAM YADAV AND ANOTHER
VERSUS
THE SUPERINTENDENT OF POLICE AHMEDNAGAR AND ANOTHER

...
Advocate for Applicants : Mr. R. R. Karpe
APP for Respondents: Mrs. G. L. Deshpande
Advocate for Asst to P.P.: Mr. S. M. Jahagirdar
...

CORAM : R.M. JOSHI, J

DATE : JUNE 15, 2023

PER COURT :

1. At the outset, learned Counsel for the Applicant in APPLN/1998/2023 seeks leave to assist learned APP.
2. Leave granted. Criminal Application No. 1998/2023 stands allowed.
3. Applicants apprehend arrest in connection with Crime No. 393 of 2023 registered with Shrirampur City Police Station, Tq. Shrirampur for the offences punishable under Section 307 read with Section 34 of the Indian Penal Code.
4. Perusal of the FIR shows that an incident

occurred on 19.04.2023 at about 10.30 pm when after exchange of words co-accused has assaulted son of the informant on his head with iron rod. It is further alleged that at that time the informant and others tried to intervene in the said assault and the present Applicants too caused assault with wooden logs on informant's son.

5. Learned Counsel for the Applicants states that in fact altogether different incident has taken place than what is narrated in the FIR. To support the said submissions, he drew attention of the Court to the first information report lodged by Rahul Yadav i.e., Applicant No. 2 herein in respect of the said incident in which he claims that informant and others caused assault on them. It is submitted that allegations in respect of offence punishable under Section 307 of IPC would not attract to the present Applicants having regard to the alleged role attributed to them. It is also contended that considering the complaint against the informant, which is first in time, the possibility of false implication cannot be ruled out.

6. Learned APP opposed the said contention by

drawing attention of the Court to the medical certificate which indicates that two grievous injuries were caused to the son of the informant. Thus, *prima facie* provisions of Section 307 of IPC gets attracted to the present case. Reference is also made to the statement of witnesses who have supported the contention of the informant in the FIR. Thus, according to her, it is not a fit case for grant of anticipatory bail.

7. There is no dispute about the fact that some incident did occur on 19.04.2023 at about 10.30 pm in which persons from both sides suffered injuries. At this stage, the question arises as to whether *prima facie* there is material on record to indicate that the offence punishable under Section 307 can be attributed to the present Applicants. Perusal of the FIR shows that there is specific allegation against co-accused for causing assault on the head of the informant with iron rod. Though, it is submitted that present Applicants also assaulted him with wooden sticks, however, the said contention does not gets support with the medical certificate on record. Statements of

witnesses are also silent about causing assault by the Applicants and the part of the body on which it was caused. Considering the fact that there is complaint against present informant and others, possibility of exaggeration while lodging report cannot be ruled out.

8. At this stage, this Court is of the view that offence under Section 307 of IPC may not attract against Applicants having regard to the role alleged against them in the FIR. There are no criminal antecedents of the Applicants. Appropriate direction to remain present before the investigating officer would be sufficient for further effective investigation.

9. Hence, application stands allowed in terms of interim order dated 18th May, 2023.

(R.M. JOSHI, J.)

Malani