

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

952 ANTICIPATORY BAIL APPLICATION NO.925 OF 2023

SHAIKH HAMID S/O. SHAIKH MOHAMMAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. Shriram Vinod Deshmukh
APP for Respondent – State : Mr. G.O. Wattamwar
Advocate for Respondent No.3 (appointed) : Mr. V.C. Dharurkar
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CORAM : R. M. JOSHI, J.
DATE : SEPTEMBER 01, 2023

PER COURT :

1. Applicant is apprehending arrest in connection with Crime No.348 of 2023 registered with Hingoli City Police Station, Dist. Hingoli for the offences under Sections 326, 354, 324, 336, 504, 506 r/w. 34 of the Indian Penal Code and Section 11 r/w. 12 of the Protection of Children from Sexual Offences Act, 2012 (For short 'POCSO Act').

2. Perusal of the First Information Report shows that, incident in respect of outraging modesty of the grand daughter of the informant by co-accused had occurred on 23.04.2023 at 06:00 p.m.

Thereafter another incident took place at around 08:30 p.m. wherein it is contended by the informant that the present applicant and the co-accused came to their house and caused assault on her and witnesses with iron rod and wooden stick. In the said incident, informant as well as others sustained injuries.

3. Learned counsel for the applicant states that perusal of the FIR indicates that there is no specific allegation against applicant of committing any particular overt act. It is his submission that omnibus allegation is made that applicant along with others caused assault on the informant and others. It is also submitted that charge-sheet is filed and that the custodial interrogation of the applicant is not necessary.

4. Learned APP opposed the application by drawing attention of the Court to the statements of witnesses as well as the injury certificates placed on record.

5. Learned counsel for the informant submits that the minor girl was assaulted in the said incident and applicant being one of the assailants he is not entitled for the anticipatory bail.

6. Perusal of the FIR shows that in respect of the incident of assault occurred at 08:30 p.m. there is no specific overt act alleged against the present applicant. The allegation in Report is omnibus in nature. It is further alleged in the FIR as well as it is stated by the witnesses that apart from causing assault on the informant and others with iron rod and sticks, the injuries were caused to them by pelting of bricks by the accused. The said contention of the informant and the witnesses is falsified with the spot panchanama which forms part of the charge-sheet. The said panchanama does not show any incident having occurred of pelting of any bricks. On the contrary, it is stated that the bricks are found neatly arranged.

7. Once doubt is created about the correctness of the FIR, the possibility of false / over implication cannot be ruled out. Undisputedly, charge-sheet has been filed in the present case. Applicant has no criminal antecedents.

8. So far as submission of learned APP about the alleged recovery of weapon is concerned, it can be taken care by directing

applicant to attend the concerned police station as and when called with notice in writing.

9. Having regard to these facts, application deserves to be allowed. In the result, following order is passed.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicant in connection with Crime No.348 of 2023 registered with Hingoli City Police Station, Dist. Hingoli for the offences under Sections 326, 354, 324, 336, 504, 506 r/w. 34 of the Indian Penal Code and Section 11 r/w. 12 of the Protection of Children from Sexual Offences Act, 2012, he be released on bail on furnishing PR Bond of Rs.15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount.
- (iii) He is directed to attend the concerned police station as and when called with notice in writing.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.

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

10. Fees of learned Advocate Mr. V.C. Dharurkar, who is appointed to represent cause of respondent No.3, is quantified at Rs.6,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[R. M. JOSHI]
JUDGE

GGP