

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

ANTICIPATORY BAIL APPLICATION NO.930 OF 2023

**JITENDRA VISHRAM BAISANE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. A. S. Sawant, Advocate for the applicant
Mrs. R. P. Gaur, APP for the respondent/State

**CORAM : R. M. JOSHI, J.
DATE : 20th JULY, 2023**

P.C. :-

1. Applicant apprehends arrest in connection with Crime No. 80/2022 registered with West Deopur Police Station, Dist. Dhule for the offences punishable under Sections 307, 354A, 354D, 323, 452, 341, 143, 147, 148, 149, 504, 506, 507, 509 of IPC and Sections 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014.

2. Admittedly co-accused are already granted anticipatory bail. The learned Sessions Court has rejected the application for anticipatory bail of this applicant on the ground that the present applicant had caused assault on the informant and thereby her pregnancy was terminated.

3. Learned APP opposed the application by contending that the statement of the injured and her mother-in-law is duly gets supported

from the injury certificate dated 26th March, 2020. According to her the alleged injury caused to the abdomen as well as knee gets duly corroborated by the blunt trauma seen thereon. On this ground learned APP opposed the application.

4. The counsel for the applicant states that the incident in question if it is accepted as it is it shows that the intention was to assault informant and not to the wife of the informant owing to the dispute between them with regard to recovery of demand. It is submitted that even Trial Court has observed in this order of rejection of anticipatory bail application that the Medical Officer was unable to opine as to whether it is the termination of the pregnancy has been caused by the assault.

5. Though there is statement of wife of the informant recorded under Section 164 of Cr. P.C. and there is injury certificate in order to support her said statement but the history recorded by the Medical Officer as given by her cannot be ignored at this stage. In the said history it is stated as follows:

"There has been a fight between her husband and few people who lend money to her husband. In between their fight she has been accidentally hit by wooden stick and stomach."

6. Undisputedly there is delay in lodging FIR which has not been satisfactorily explained. Considering the disputes between parties over monetary transactions, false or over implication cannot be ruled out. The history given to Medical Officer clearly shows that this could be a case of accidental injury to the wife of informant. In such circumstances it is not possible to hold at this stage that applicant caused any intentional assault on her, which led to causing of miscarriage. The injury if any caused (as Medical Officer is also not certain about cause of miscarriage) to wife of informant cannot be attributed to the applicant for want of *mens rea*. Hence it is not possible to hold that applicant caused her miscarriage. In view of this, liberty of the applicant deserves to be protected. Hence the application is allowed in terms of interim order dated 22nd June, 2023.

(R. M. JOSHI, J.)

ssp