

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

**ANTICIPATORY BAIL APPLICATION NO.995 OF 2023
WITH APPLN/2647/2023 IN ABA/995/2023**

**BANKANT S/O CHANDRKANT GAIKWAD AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Ms. Renuka V. Ghule, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. S. N. Patne, Advocate for the informant.

CORAM : R. M. JOSHI, J.

DATE : 24th AUGUST, 2023

P.C. :-

1. Applicants apprehend arrest in connection with Crime No. 225/2023 registered with Omerga Police Station, Tal. Omerga, Dist. Osmanabad for the offences punishable under Sections 307, 341, 504, 506, 143, 147, 148, 149 of IPC.

2. The informant is an Advocate and son of applicant No.2. As per the first information report there are disputes between the informant and his father. On 3rd May, 2023 he reported the incident occurred on 27th April, 2023. According to him on that day he was attempted to kill by the applicants and co-accused. There is allegation against applicant No.1 that he assaulted the informant with knife on his abdomen. Whereas the allegation is made against applicant No.2 that he tried to kill him with

axe however as he could avoid the said blow, the said axe dash against the motorcycle seat of the informant. He further states that he was taken to hospital and was given primary treatment and was discharged on 1st May, 2023. He further contends that since he was asked to take rest, he came to the police station on 3rd May, 2023.

3. Learned counsel for the applicant states that there are disputes between the applicant No.2 and informant and since there is delay in lodging the first information report which creates possibility of false implication of the applicants in this crime. It is also submitted that the informant did not sustain any grievous injuries and in fact in the same incident it was informant who had caused assault on the wife of applicant No.1 in respect of which report was lodged immediately by her against the informant. Thus, it is her submission that the present first information report is by way of counter blast and to falsely implicate the applicants in this crime.

4. Learned APP opposed the application by referring to the injury certificate as well as the statements of eye witnesses who were present at the spot of incident at the time of its occurrence. It is submitted that the statements of witnesses the first information report and injury certificate corroborate to each other.

5. Learned counsel for the informant opposed the grant of anticipatory bail on the ground that the applicants herein during the protection granted by this Court from their arrest have committed serious offence punishable under Section 307 of IPC and hence they are not entitled for protection. As regards lodging of the report dated 3rd May, 2023 it is sought to be contended that doctor has advised him to take rest and hence the report was not lodged immediately.

6. Perusal of the first information report itself clearly shows that there are disputes between applicant No.2 on one hand and informant and his mother on other. The incident in question has occurred on 27th April, 2023 at around 08.00 to 09.00 a.m whereas the report is lodged on 3rd May, 2023. Pertinently there is already a report lodged in respect of the said incident indicating that the in fact the informant had caused assault on the wife of the applicant No.1 in which she sustained injury. The document placed on record by the applicants supports the said fact. As far as the delay in lodging of the FIR is concerned, it is necessary to take note of the injury certificate which form part of the investigation papers, clearly shows that simple injury was caused to the abdomen of the informant. As far as the other injuries i.e. abrasions are concerned, it can be safely said that such injuries are possible to be caused even to an assailant in the incident occurred on 27th April, 2023 and therefore

causing of the abrasions to him and hence said injuries cannot be attributed to the present applicants. Once it is found that the simple injuries were caused to the informant, it does not stand to any reason as to why the report of the said incident occurred on 27th April, 2023 is lodged on 3rd May, 2023. The explanation sought to be given by the informant he was advised by the doctor to take rest does not get support from record and hence deserve no acceptance, for the reason that no serious injury was caused to the informant at any point of time.

7. As regards the allegations now sought to be made against the present applicants that they misused the liberty and in this regard the first information report lodged by mother of the informant is relied upon. It is pertinent to note that the alleged incident has occurred in house of the informant. Obviously therefore there can never be any independent witness to such incident. The informant and mother of the informant who are having enmity with the applicant No.2 and their statements will have to be accepted as gospel truth. On the face of it their statements are not acceptable because if it alleged against the applicants that they poured petrol on the person of mother of the informant and she was set ablaze, practically impossible that she would not sustain any burn injuries. Her statement shows that after she was set ablaze, informant herein was called. Thus considering highly inflammable nature

of petrol, non causing of even superficial single burn injury raise serious doubt about occurrence of incident as alleged. This Court therefore has reason to accept contention of applicants that in order to oppose the present application, false and concocted story is sought to be made out. All these facts and circumstances demonstrate that there is strong possibility of applicants being tried to be implicated in crime and hence it is a fit case to protect their liberty. Hence application is allowed by confirming interim order dated 28th June, 2023.

8. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp