



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1270 OF 2023

Annasaheb Bhagwat Vitnor & Others ...Applicants

VERSUS

The State Of Maharashtra ...Respondent

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Ms. S. A. Kale, Advocate for the Applicant.

Mr. M. K. Goyanka, APP, for the Respondent – State.

Mr. K. N. Shermale, Advocate for the informant.

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CORAM : R. M. JOSHI, J

DATE : NOVEMBER 29, 2023

PER COURT :

1. Applicants apprehend arrest in connection with with C.R. No. 640 of 2023 registered with Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 427, 504, 506 of the Indian Penal Code.

2. First informant Navnath on 13.06.2023 at about 12.40 am reported to the police incident occurred on 10.06.2023 at around 03.00 pm. According to him, there is dispute between his family and Applicants' family over the issue of road going from their property. It is claimed that on the day of incident Applicants and co-

accused in disregard of the order of Civil Court where preparing road from the property and while same was obstructed, it was questioned by informant and accused Amol assaulted informant with iron pipe in his hand. Allegation is made against Babasaheb that he assaulted informant with axe on his leg. According to the informant, when his brother Dnayndeeep and mother Asrabai came to rescue him, they were also assaulted by Appasaheb with iron pipe. Allegation is made against female accused that they assaulted Asrabai with fist and kick blows. Allegation is made against Applicant No. 1 Annasaheb that he assaulted Asrabai on her back, waist and legs. There is specific allegation that informant and his brother Dnyandeep were assaulted with stick.

3. Learned Counsel for the Applicants submit that there is delay in lodging in report and considering the dispute between the parties, the possibility of false/over implication is not ruled out. It is submitted that as far as the women Applicants are concerned, there is no allegation against them of using any weapon for causing of the assault and that the

informant belatedly and thoughtfully has lodged report implicating all family members of the Applicants in this crime. It is further submitted that the accused against whom there is allegation of causing serious injury to the informant and witnesses are already arrested and at their instance recovery of the weapons has already been done. It is submitted that custodial interrogation of the Applicants is not necessary for the purpose of recovery of any incriminating articles.

4. Learned APP opposed the application by relying upon the investigation papers and more particularly, the statements of witnesses and injury certificate. It is submitted that having regard to the fact that Dnyandeep and Navnath had sustained one grievous injury, apart from other injuries, it is not a fit case for grant of anticipatory bail.

5. Learned Counsel for the informant opposed the application by contending that since Section 149 IPC has been invoked, the Applicants are also to be held responsible for the acts of the co-accused as they had common object of causing assault on the informant and witnesses. It is also sought to be argued that merely

because there is no recovery to be done at the instance of Applicants, they are not entitled for anticipatory bail. He further submits that Applicants here have no regard to the law and hence, Applicants are not entitled for any relief. In support of his submissions, he placed reliance on following judgments/orders: Nasiruddin V. State (NCT) Delhi and Others, (2013) AIR (SCW) 5173, Rahul Kishor Chauhan Vs. The State of Maharashtra, ABA/431/2021, Gorakh Jagannath Dalvi Vs. The State of Maharashtra, ABA/718/2022, Sumitha Pradeep Vs. Arun Kumar C.K. and Anr, Criminal Appeal No. 1834/2022, Surenda Singh Vs. State of Rajasthan and Anr, Criminal Appeal No. 4241/2019.

6. No dispute can be raised in respect of propositions laid down by Hon'ble Apex Court for purpose of grant/refusal of anticipatory bail. It is settled law that the Court has to be careful in accepting allegations when there exist prior dispute between the parties. Similarly, requirement of the recovery at the instance of accused cannot become sole ground for grant of bail but it can be one of the circumstance to be taken into consideration.

7. There is no dispute about the fact that over the issue of road, parties are at loggerhead with each other. The civil suit is pending wherein injunction order is passed in favour of the informant. The said order is passed about a year back and there is nothing on record to show that during this period before lodging of the present report, the said injunction has been sought to be flouted by the Applicants, Thus, it cannot be claimed at this stage that the Applicants have no regard for the law. There is nothing brought on record to indicate that any any point of time any proceeding is initiated against the Applicants for contempt of Court or violation of order of injunction.

8. Needless to record that the previous dispute on one hand may create the possibility of commission of crime but on the other hand it may also provide the reason for false/over implication. Though, it is sought to be argued on behalf of informant that owing to the injuries caused to the informant, no report could be lodged immediately and the informant was immediately taken to the hospital. If it is so, still it does not stand to any reason as to why no report is recorded by

police when informant was admitted in the Rural Hospital. Whenever there is delay in lodging of the report, the possibility of concoction/over implication creeps in. In the instant case, admittedly the accused against whom the allegations are made of causing grievous injuries to the informant and his brother are already arrested and there is recovery of weapon at their instance. The possibility of over implication can be seen from the claim of informant that Asrabai sustained serious injuries. Pertinently, she is said to have been assaulted by the number of persons whereas the injury certificate indicates one simple injury being caused to her. It is difficult for this Court to accept at this stage that so many person if have assaulted Asrabai then how a single simple injury is caused to her. This shows that there is substance in the contention of Applicants that this could be a possible case of over implication.

9. There is no dispute about the fact that the alleged weapons used in the crime are already seized. Applicants have no criminal antecedents. *Prima facie* grievous injuries caused to the informant and witnesses

are not attributable to the present Applicants. Merely because, Section 149 IPC is invoked at this stage it cannot be said that all the accused went to the spot with common object as admittedly all of them were not even armed as per case of informant. This *prima facie* findings is inevitable in view of the possible exaggeration/over implication of the Applicants. *Prima facie* considering totality of facts of the case, it is a fit case to grant anticipatory bail to the Applicants. There is nothing to show that Applicants misused the liberty of interim protection or did not cooperate investigation. They are not likely to flee from justice. Hence, application is allowed by confirming interim order dated 03rd August, 2023.

(R. M. JOSHI, J.)

Malani