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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.186 OF 2022

Namoji Sadashiv Mule

APPLICANT

VERSUS

Deepak Bharat Kale and Another

RESPONDENTS

Ms. Ashwini Lomte h/f Mr. S. J. Salunke, Advocate for applicant
Mr. A. A. Jagatkar, APP for respondent - State
Mr. Omprakash Waghmare, Advocate for respondent No.1

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JANUARY, 2023

ORDER :

1. This application is filed by the informant, under section 439 (2) of the Code of Criminal Procedure seeking cancellation of anticipatory bail granted in favour of respondent No.1, in Crime No. 352 of 2022 registered with Georai Police Station, District – Beed for offence punishable under sections 307, 326, 323, 504, 506 read with 34 of the Indian Penal Code and under sections 4 and 25 of the Arms Act.
2. The applicant lodged FIR on 9th July, 2022 alleging that respondent No.1, along with other accused persons assaulted his

brother Om Mule. In presence of the informant, respondent No.1 gave blow of axe on the head of Om, which caused bleeding injury and when the informant and his father tried to lift Om, co-accused Badam Kale assaulted on his head with iron rod. Co-accused Sachin Kale inflicted stick blow on his forehead. Accused Bharat Kale inflicted blow of blunt side of sword on left hand of his father. Other accused persons gave fists and kick blows to his other brother Shivtej.

3. Pursuant to the registration of crime, respondent No.1 preferred Criminal Bail Application No. 728 of 2022 under section 438 of the Criminal Procedure Code. Learned Additional Sessions Judge granted anticipatory bail to respondent No.1 on the ground of parity and on the ground that the accused in the counter case is also granted anticipatory bail.

4. Heard learned advocate for the applicant, learned advocate for respondent No.1 and the learned Additional Public Prosecutor for the State. Perused the investigation papers.

5. A specific role of assault with axe on the head of the injured is attributed to respondent No.1. Injury certificate shows that due to the assault by respondent No.1, injured Om has suffered CLW on left temporo parietal region of 2X3X3 cm, which

is a grievous injury and compound depressed fracture # on left frontal dura tear interparenchymot hematoma, which is also a grievous injury. Other injured persons have also suffered injuries in the said incident.

6. Though counter case is lodged by respondent No.1 at CR No. 356 of 2022 against the family members of the applicant for offence punishable under sections 323, 326, 327, 504, 506 read with 34 of the Indian Penal Code and they are granted anticipatory bail in said offence, that by itself cannot be a ground to grant anticipatory bail to respondent No.1.

7. Learned Additional Sessions Judge has failed to consider the gravity of act of assault committed by respondent No.1 and specific role attributed to him. Only on the ground of parity, learned Sessions Judge has proceeded to grant anticipatory bail to respondent No.1. There is total non application of mind on the part of the learned Sessions Judge in granting anticipatory bail to respondent No.1, when it is specifically alleged that he has assaulted the injured on vital part with deadly weapon. The impugned order cannot be sustained in the facts of the present case.

8. For the aforesaid reasons, the application is allowed in

terms of prayer clause "C". The impugned order dated 20th August, 2022 passed by Additional Sessions Judge, Beed in Criminal Bail Application No. 728 of 2022 is quashed and set aside. Anticipatory bail granted to respondent No.1 is hereby cancelled.

[NITIN B. SURYAWANSHI]
JUDGE

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