

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1681 OF 2023
WITH APPLN/3729/2023 IN BA/1681/2023**

**KISHOR DHONDIBA MANDLIK
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. Nilesh S. Ghanekar, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.
Mr. K. N. Shermale, Advocate for Complainant.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 10th OCTOBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.573/2023 dated 29.08.2023 registered with Akole Police Station, Dist. Ahmednagar for the offences punishable under Sections 326, 336, 34, 504, 506 of the Indian Penal Code. It is informed that subsequently by order of the learned J.M.F.C., the offence under Section 307 of the Indian Penal Code is added.

2. The investigation was set in motion on the basis of the information given by Pravin Vilasrao Deshmukh, who alleges that on 27.08.2023 he was called by accused for meeting at the home of the common friend namely Ashok Deshmukh, where they had to discuss about settlement of previous transactions. At about 08.00 pm they gathered at the venue. During discussions at meeting quarrel craped up between applicant and the informant. It is further alleged that suddenly the applicant thrown teapoy on the person of the informant. Thereafter, accused went outside, returned with a sickle and gave blow on informant's forehead causing bleeding injuries. Subsequently, the applicant threatened him of dire consequences following with sickle in his hand. With

this allegations, the complaint came to be registered with Akole Police Station for offences punishable under Sections 326, 336, 504, 506 r/w 34 of the Indian Penal Code. It appears that subsequently Section 307 of the Indian Penal Code has been added.

3. Mr. Ghanekar, learned Advocate appearing for the applicant would submit that there was dispute regarding money transaction between the applicant and the informant. The meeting was arranged and there was some quarrel. He would submit that the applicant has been arrested in pursuance of the offences and he is behind the bar for more than one and half months. The investigation in the matter is over. Further detention of the applicant would not be necessary. He would further submit that, although alleged offence took place on 27.08.2023, the FIR is lodged after delay of about 51 hours. He would further submit that, although Section 307 of the Indian Penal Code is added, looking to the allegations in the FIR and the injuries suffered by the informant, no such offence attracts in facts of the case.

4. The learned APP as well as learned Advocate appearing for the informant strongly opposes the application. They would point out that the offence is serious. The applicant has caused injury to the informant using a deadly weapon. The injury is on the vital part. The medical evidence shows that the informant has suffered three injuries including injury on forehead, which is grievous in nature. Further there is recovery under Section 27 of the Indian Evidence Act, 1872 from the applicant. The learned APP also points out that the statement of the eye witnesses are recorded, which confirms the incident as stated in the FIR.

5. Mr. Shermale, learned Advocate appearing for the informant in support of his submissions relies upon the observations of the Supreme Court of India in the matter of ***Sudha Singh Vs. The State of Uttar Pradesh and Anr.***¹, so also the observations of the Supreme Court of India in the matter of ***S. K. Khaja Vs. The State of Maharashtra***². He would submit that in the facts of the case the offence under Section 307 of the Indian Penal Code would attract. The release of the applicant may hamper the further investigation, which is still in progress. He would, therefore, urge that till filing of the charge-sheet, there is no reason to consider the prayer of the applicant for release on bail.

6. Having considered the submission advanced, apparently FIR has been registered on 29.08.2023 at about 23.46 hours regarding incident that took place on 27.08.2023 at about 08.00 pm. The delay in lodging the FIR is apparent on the face of record. Initially, FIR was registered for the offences punishable under Sections 326, 336, 504, 506 r/w. 34 of the Indian Penal Code, however, graver offence under Section 307 of the Indian Penal Code has been subsequently added. Perusal of the contents of the FIR would show that a meeting was arranged for settlement of the dispute regarding the financial transactions between the informant and accused and during such meeting suddenly the incident occurred. The allegation in the FIR states that the applicant thrown teapoy on person of the informant and thereafter, he gave blow of sickle on forehead of the informant causing bleeding injury. The investigation papers show the statements of the eye witnesses are recorded. The statement of witness namely Ashok Deshmukh clearly stipulates that during

¹ Criminal Appeal No.448 of 2021.

² Criminal Appeal No.1183 of 2011.

the meeting there was sudden quarrel between the applicant and the informant. The applicant thrown teapoy on person of the informant causing head injury to him. There is no reference of use of any weapon like sickle. Even, the injury is attributed to use teapoy. There is material contradiction in the narration of the incident as appearing in the FIR and the statements of the eye witnesses. Although, there is recovery under Section 27 of the Indian Evidence Act, 1872, in light of the aforesaid factual aspects *prima facie*, it is difficult to make out case under Section 307 of the Indian Penal Code. The investigation in the matter is practically over. There are no criminal antecedents to discredit the applicant. The case is made out for grant of bail. Hence, following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Kishor S/o Dhondiba Mandlik be released on bail in Crime No.573/2023 dated 29.08.2023 registered with Akole Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 326, 336, 34, 504, 506 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicants shall attend the concerned police station once in a week i.e. on every Thursday between 10.00 am to 02.00 pm till filing of the charge-sheet.
- (iii) Application is disposed of.

(iv) In view of disposal of the Bail Application No.1681 of 2023, the Criminal Application No.3729 of 2023 is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2023