

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2284 OF 2023

Amol Kashinath Kamble

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Nitin Satpute, Ms. Shobha Buddhivant, Mr. Deepak Jagdev
and Ms. Aarti Bajpai for the Applicant.

Mr. S.H. Yadav, APP for the Respondent-State.

Ms. Nikita Kolapkar, Samtanagar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th AUGUST, 2023.

P C. :-

. This is an Application under section 438 of Cr.P.C. filed by the
aforesaid Applicant apprehending his arrest in C.R.No.440/2023
registered with Samta Nagar Police Station, Mumbai for offences
punishable under sections 326, 504, 506 r/w. 34 of the Indian Penal
Code.

2. Heard learned counsel for the Applicant and learned APP for the
State. I have perused the records and considered the submissions
advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Jitesh Parasnath Vishwakarma, who was working as a Supervisor at Navnath Enterprises. The facts narrated in the FIR prima facie reveal that on 30/06/2023, at about 23:45 hours, there was some altercation between Navnath Chopde and the co-accused Akshay Chopde over removal of mud and parking of JCB machine in the middle of the road. The co-accused left the place threatening Navnath of dire consequences. He returned some time later along with the Applicant and the other co-accused and assaulted the first informant and Navnath with kicks and blows. It is alleged that the Applicant hit a stone on the nose of Navnath as a result of which, he sustained bleeding injury and fell unconscious on the spot.

4. The records reveal that the injured – Navnath was treated in Apex Multi Speciality Hospital. The medical report indicates that he was bleeding from nose, was vomiting, was feeling giddy and was in drowsy state. The CT Scan revealed that his nasal bone was fractured. The medical report thus prima facie indicates that the injured – Navnath had sustained grievous injury within the meaning of section 320 of IPC.

5. Learned counsel for the Applicant contends that the stone by

which the injured – Navnath was allegedly assaulted, cannot be termed as a dangerous weapon. He submits that the offence at the most would be covered under section 325 IPC. He has relied upon the decisions of the Hon'ble Apex Court in ***Nanda Gopalan v/s. State of Kerala (2015) 11 SCC 137***. The Apex Court while considering the nature of the offence and considering the scope of section 326 of IPC referred to the previous judgment in ***Mathai v/s. State of Kerala (2005) 3 SCC 260*** wherein it was observed thus :-

“ 16. The expression “any instrument which, used as a weapon of offence, is likely to cause death” (Section 326) has to be gauged taking note of the heading of the section. What would constitute a “dangerous weapon” would depend upon the facts of each case and no generalisation can be made.

17. The heading of the section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are: (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in State of U.P. v. Indrajeet [2000 (7) SCC 249] there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. As noted above, the evidence of the doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression “grievous hurt” as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. It is not that in every case a stone

would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 the expression “dangerous weapon” is used. In some other more serious offences the expression used is “deadly weapon” (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable. ”

6. As it has been held by the Apex Court, whether the weapon is dangerous weapon or not has to be gauged only on factual basis. A stone may not be a dangerous weapon in every case. Several factors such as the size, shape, weight, texture, etc. would be relevant to determine whether the stone is a dangerous weapon or not.

7. In the instant case, the injured was hit with a stone. He had sustained bleeding injury and was unconscious on the spot. This fact itself prima facie suggest that the injury was inflicted with great force and the same had resulted in fracture of the nasal bone. In such circumstances, at this stage of deciding the bail application, it cannot be held that the stone was not a dangerous weapon.

8. The FIR prima facie indicate that after initial altercation, the co-accused had left the place by giving threats of dire consequences. He had returned along with the Applicant and others and had assaulted the first informant and the injured – Navnath. These facts prima facie negate the contention of the learned counsel for the Applicant that the incident had occurred on the spur of the moment.

9. Learned counsel for the Applicant has also raised the plea of parity in view of the order dated 27/07/2023 in Anticipatory Bail Application No.2042/2023. The co-accused was granted bail considering the fact that he was only involved in assaulting the first informant and injured by means of kicks and fist blows. It was observed that the grievous injury was inflicted by the present Applicant. Considering the role attributed to the Applicant, the principle of parity is not available.

10. Having considered the nature of the offence and the material in support thereof, in my considered view, this is not a case to exercise discretion under section 438 of Cr.P.C. Hence, the Application is dismissed.

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(SMT. ANUJA PRABHUDESSAI, J.)