

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 2962 OF 2023

Avinash Hindurao Olekar and Others ...Applicants

Vs.

The State of Maharashtra and Others ...Respondents

Mr.Vivek Arote i/b Kawchale, for Applicants.

Mr. M. G. Patil, APP for State.

Mr. Balwant Salukhe, for Complainant.

Mr. Jaysing Ahire, IO, Kavthemahakal Police Station,
Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 9th NOVEMBER, 2023

PC:-

- 1) Heard the learned counsel for the applicants and the learned APP for the State.
- 2) This application is preferred for pre-arrest bail in connection with C.R. No. 353 of 2023, registered with Kavthemahakal Police Station, Sangli for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 148 and 149 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant and Hindurao Olekar have a boundary dispute. On 30th September, 2023 while the informant's nephew Sagar Olekar was returning home, the applicants and the co-accused racked up a quarrel. Applicant – Avinash Olekar allegedly assaulted Sagar by means of an axe on his head. Sagar raised alarm, the first informant went to his rescue. Thereupon applicant – Raju Olekar assaulted the first informant by means of an axe on his head and left the occipital region. Thereafter, the rest of the accused abused and assaulted the first informant and Sagar by means of fist and kick blows.

4) The learned Counsel for the applicants submitted that the first informant had lodged an exaggerated version. Though the first informant alleged assault by means of an axe, the said allegation is not borne out by the nature of the injuries sustained by the first informant and Sagar. The learned Counsel for the applicants further submitted that in respect of the very same occurrence, the accused party had also lodged a report being CR No. 354 of 2023.

5) The learned APP submitted that the specific role of assault by means of an axe is attributed to the applicants. Weapons of

assault are yet to be recovered. Therefore, custodial interrogation of the applicants is warranted.

6) I have perused the allegations in the FIR and the injury certificates. The applicants had allegedly assaulted injured Sagar and the first informant by means of an axe. The injury certificates, however, indicate that both the applicants sustained lacerations. None of them suffered any grievous injury. It seems that on account of a boundary dispute, the parties are riven asunder. Cross versions have been reported in respect of one and the same occurrence. The applicants appear to have a fixed place of abode. Possibility of fleeing away from justice and tampering with evidence appears to be remote.

7) The learned counsel for the first informant submitted that applicant No. 1- Avinash is facing a prosecution for an offence punishable under Section 307 of the Penal Code. In the event, he has granted pre-arrest bail, there is a likelihood of tampering with evidence and threatening the witnesses. This concern can be taken care of, by imposing appropriate conditions.

8) Hence, the following order:-

ORDER

I) In the event of arrest of the applicants in connection with C.R. No. 353 of 2023, registered with Kavthemahakal Police Station, Sangli for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 148 and 149 of Indian Penal Code, 1860, the applicants be released on bail on executing a PR Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount.

II) The applicants shall co-operate with the investigation and attend Kavthemahakal Police Station, Sangli on 24th, 25th and 26th November, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

III) The attendance of the applicants before the Investigating Officer shall be construed as custody for the purpose of recovery of the weapon of offence as clarified in the judgment of the Supreme Court in the case of Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another (2020) 5 SCC 1 in paragraph No. (92.8).

IV) The applicant No. 1 Avinash shall stay away from limits of village Kokale for a period of six months.

V) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case

VI) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

VII) The application stands disposed.

[N. J. JAMADAR, J.]