

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.489 OF 2023

Akshay Subhashrao Babhulkar

Vs.

State of Maharashtra, Through Police Station Officer, Frezarpura, District Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. V. Navlani, Advocate for applicant.
Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/08/2023

1. By this application, the applicant seeks anticipatory bail in connection with the Crime No.456/2023 for the offences punishable under Sections 326 and 504 read with Section 34 of the Indian Penal Code.

2. The present applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Prashant Mahurkar on an allegation that on 20.06.2023, he was present at Kailash Dham cremation ground to perform last rites of one Bhauraoji Vyawahare. At that time, the quarrel took place and the present appellant gave a blow of iron rod on his head but he avoided the said blow and sustained the blow on his nose. Due to which, he is sustained a nasal fracture. On

the basis of the said report, police have registered the crime against the present applicant.

3. As per contention of the present applicant that informant has lost his balance and sustained injury to his nose due to fall. In fact, the present applicant has not given any blow by iron rod. His custodial interrogation is not required. He be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State on the ground that the present applicant was holding iron rod in his hand and the blow was given on head but somehow, the informant was succeeded in avoiding the said blow and the blow was received on the nose which resulted into the injury on nose. Considering the *prima facie* material against the present appellant, the bail application deserves to be rejected.

5. Having heard learned Counsel for the applicant Mr. Navlani and learned APP Mr. Damle for the State. Perused the investigation papers, it appears that in a sudden fight and sudden quarrel, the alleged incident has taken place. As per the allegation, blow was given by the iron rod, whereas as per the contention of the applicant that he sustained injury due to fall. The injuries suddenly came on record, which shows that he is already discharged from the hospital. Even, he was also

not admitted in the hospital. Even the medical certificate nowhere discloses that he has sustained the nasal bone fracture but blunt trauma is received on nose. As far as the contention of the prosecution is concerned, his custodial interrogation is required to seize the iron rod and his clothes which were on his person at the time of incident. The directions can be given to the present applicant to produce the same before the Investigating Officer and the said period can be considered as his custody under Section 27 of the Indian Evidence Act. In view of that, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Akshay Subhashrao Babhulkar** is released on anticipatory bail in the event of his arrest in connection with Crime No.456/2023 registered with Police Station, Frezarpura, for the offences punishable under Sections 326 and 504 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with on solvent surety in the like amount.
- (iii) The applicant shall remain present before the Investigating Officer on 11.08.2023 and shall produce the iron rod as well as his clothes which were on his person and said period will be considered as his custody under Section 27 of the Indian Evidence Act.

(4)

31.aba.489.2023

(iv) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

(v) The applicant shall attend Police Station as and when required for investigation purpose.

(URMILA JOSHI-PHALKE, J.)

Sarkate