



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

CRIMINAL APPLICATION (ABA) NO. 741/2023

Girish Dayaram Gawai and another V/s State of Maharashtra.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.P.Kariya, Counsel for the applicants.

Mrs. M.R.Kavimandan, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/12/2023.

1. By this application, the applicants are seeking anticipatory bail, in the event of their arrest, in connection with Crime No. 285/2023 registered with Police Station Pinjar, Tq. Barshi Takli, District Akola for the offences punishable under Sections 323, 326, 504 and 506 read with Section 34 of the Indian Penal Code, 1860.

2. The applicants are apprehending their arrest at the hands of the Police as the acquisition is made against them on the basis of the report lodged by Ramesh Khanduji Khandare, on an allegation that he is the agriculturist, and on 10/03/2023 the Court has granted the injunction in his favour as his brother i.e. applicant No.1 was restraining him during the agricultural operations.

3. On 30/10/2023 at about 7.00 a.m. when he went to his agricultural field, he witnessed that his electric motor pump was removed from the Well. On inquiry, he came to know that applicant No.1 had removed the said electric pump from the Well. On 31/10/2023 at about 11.00 a.m. when he was in an agricultural field and carrying out the agricultural operations, present applicants entered their agricultural field, and applicant No.1 assaulted him by means of iron pipe and applicant No.2 by fist and kick blows. Due to the said assault, he has sustained a grievous injury, on the basis of the said report, the Police have registered the crime.

4. Mr. M.P. Kariya, learned counsel for the applicants submitted that this false report was lodged by the informant. He has sustained injuries in a vehicular accident. Present applicant No.1 was apprehending that he would be implicated in the false report, therefore, he approached the Police Station and expressed his apprehension before the Police on 31/10/2023 itself. The police have recorded his statement. The injured is now already discharged from the hospital, the custodial interrogation of the present applicants is not required and they be protected by granting anticipatory bail.

5. Mrs. M.R. Kavimandan, learned APP strongly opposed the present application on the ground that the injured has sustained grievous injuries like Right Tibia and Left Ulna fractured. The alleged weapon of the offence iron pipe and offence of the weapon is yet to be recovered, therefore, the custodial interrogation of the present applicants are required and prays for rejection of the application.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that as far as the recitals of the FIR, the informant was assaulted by the applicants. The specific role is attributed to applicant No.1, he assaulted him by means of an iron pipe. The said incident was witnessed by one Subhash Narayan Ingole and Ashish Borse. The injury certificate of the injured shows that he has sustained a fractures of Tibia and Ulna, and he was hospitalized for the same. As far as the contention of the applicants is concerned, that the injured has sustained the injuries in a vehicular accident, no material is produced to ascertain the same.

7. Considering the allegations against the present applicant No. 2 is only to the extent that he assaulted the injured by fist and kick blows. Thus, applicant No.2's custodial interrogation is not required, however, considering the role of applicant No.1 who has used a

weapon like the iron pipe, due to which, the injured has sustained grievous injuries, his custodial interrogation is required, therefore, his prayer for grant of anticipatory bail cannot be considered.

8. In view of the above facts and circumstances, the criminal application is partly allowed. Accordingly, I pass the following order:

A] The Criminal application is **partly allowed**.

B] In the event of his arrest, the applicant No.2 Sadashiv s/o Haribhau Bhatulkar in connection with Crime No. 285/2023 registered with Police Station Pinjar, Tq. Barshi Takli, District Akola for the offences punishable under Sections 326, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, is hereby released on anticipatory bail on executing P.R. bond of Rs. 25,000/- each with one solvent surety in the like amount.

C] The prayer of applicant No.1 for grant of anticipatory bail is **rejected**.

D] The Applicant No.2 shall attend the concerned Police Station as and when required for investigation purpose and shall cooperate with the investigating agency.

E] The Applicant No.2 shall not directly or indirectly induce, threat or promise any witnesses who are acquainted with the facts of the case.

Criminal application is partly allowed and disposed of.

[URMILA JOSHI-PHALKE, J]