

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2728 OF 2023
WITH
INTERIM APPLICATION NO.3721 OF 2023

Gajanan Appaso Shingade and Anr. ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Dhananjay Rananaware, for the Applicants.
Mr. Mohd Juned h/f. M.M. Sebastian, for the Intervener.
Mr. A.A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: AUGUST 8, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.441 of 2023, registered with Waduj Police Station, Satara, for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 354, 354-B, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").
3. On 31st August, 2023 at 9.30 pm at Yalmar Wadi, Tal. Khatao, Dist. Satara, Gajanan Shingade (A/1), the applicant No. 1 allegedly drove motor-cycle sans the silencer, resulting in a loud noise. The informant went to the house of Appaso Shingade to complain against the conduct of Gajanan Shingade

(A/1). Thereupon, Gajanan Shingade (A/1), Avinash Bagal (A/2), the applicants, and other co-accused formed an unlawful assembly and, in prosecution of the common object of unlawful assembly, assaulted the first informant. Gajanan Shingade, the applicant No. 1, allegedly gave a blow by means of iron knuckle on the face of the first informant. Avinash Bagal (A/2) assaulted the first informant by means of waist belt. When the wife of the first informant came to his rescue, the applicants and the co-accused used criminal force to her, and thereby outraged her modesty.

4. When the application was listed before the Court on 3rd October, 2023, this Court was persuaded to grant interim bail to the applicants opining that prima facie, the question as to whether the first informant sustained injury which falls within the ambit of the provisions contained in section 326 of the Penal Code appeared to be debatable.

5. Mr. Rananaware, the learned counsel for the applicants submitted that the applicants have appeared before the Investigating Officer and cooperated with the investigation. The applicants have been on interim bail since 3rd October, 2023. Therefore, at this length of time, custodial interrogation of the applicants is not warranted.

6. Mr. Naik, the learned APP, resisted the prayer for bail. Attention of the Court was invited to the injury certificate of the first informant which indicates that there was blunt trauma around left eye and left cheek. The city scan report revealed that there was hairline fracture on the left maxillary sinus, tiny fracture at left lamina papyracea and frontal process at left maxilla. The medical officer opined that the said injuries were of grievous nature. Mr. Naik further submitted that there are eye witnesses who have stated that the applicant No. 1 Gajanan assaulted the first informant by means of iron knuckle. Avinash, applicant No. 2 beat the first informant by means of belt. Therefore, the applicants do not deserve the relief of pre-arrest bail.

7. Reliance was placed on the decision of the Supreme Court in the case of **Hori Lal and Anr. vs. The State of U.P.**¹ wherein, it was enunciated that to designate the injury as grievous hurt within the meaning of section 320 of the Penal Code, it was not necessary that a bone should be cut through and through, or that crack must extend from the outer to the inner surface, or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone, or there is a rupture or fissure in it, it

¹ AIR 1970 Supreme Court 1969.

would amount to a fracture within the meaning of Clause 7 of Section 320. What the Court has to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.

8. Mr. Juned, the learned counsel for the Intervener/first informant, resisted the prayer for pre-arrest bail. It was submitted that the applicants and co-accused had assaulted the first informant and outraged the modesty of the wife of the first informant, when she came to his rescue. There are a number of eye witnesses to the said occurrence. Thus, the applicants do not deserve the pre-arrest bail.

9. I have perused the material on record including the injury certificate and the statements of witnesses tendered for the perusal of the Court.

10. The Medical Officer has opined that there was a hairline fracture on left maxillary sinus, a tiny fracture at left lamina papyracea and frontal process at left maxilla. Whether the said hairline and tiny fracture would fall within the ambit of the grievous hurt punishable under section 326 of the Penal Code, is a matter for evidence. Prima facie, that question, in my view, is debatable.

11. At any rate, the nature of the occurrence can not be lost sight of. It appears an altercation ensued as the first informant reported the alleged irresponsible driving of the motor-cycle by the applicant Gajanan (A/1). The incident seems to have occurred at the spur of the moment. Prima facie, there does not appear to be any pre-meditation. In the aforesaid view of the matter and having regard to the fact that the applicants are on interim bail since 3rd October, 2023, I am, inclined to make the order of interim bail absolute.

Hence the following order:

: O R D E R :

- (i) The order of interim bail dated 3rd October, 2023 is made absolute on the terms and conditions incorporated therein.
- (ii) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (iii) It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.
- (iv) Application stands disposed.
- (v) In view of the disposal of the application, the Interim Application does not survive and stands disposed.

[N. J. JAMADAR, J.]