

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 499 OF 2024

Vishwas Atmaram Kathara

.... Applicant

Versus

The State of Maharashtra

.... Respondent

YUGANDHARA
SHARAD
PATIL

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by
YUGANDHARA
SHARAD PATIL
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Mr. Tanveer Aziz Patel, for the applicant.

Mr. Avinash A. Naik, APP for the State/Respondent.

Mr. Sameer Mhatre a/w Rakesh Patil for the informant (Original complainant)

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2024

PC. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No. 27 of 2024 registered at Khandeshwar Police Station, Navi Mumbai, on 02/02/2024 under Sections 326, 323, 504, 506 r/w 34 of the Indian Penal Code.

2. Heard Mr. Patel, learned counsel for the Applicant, Mr. Avinash Naik, learned APP for the Respondent-State and Mr. Sameer Mhatre for the informant.

3. The FIR is lodged by one Sanjay Patil. He has stated that he was constructing a compound wall in the property of one Valmiki Khairnar in the village of Nevali. On 01/02/2024, at about 2.00 p.m., the informant and three to four workers were present at the spot. At that time, the Applicant and three others came there and told him to stop the work. There was a quarrel as the informant refused. It is alleged that the Applicant and his friends started abusing the informant. The Applicant picked up a stick which was lying at the spot but slapped the informant with his hands. The FIR further mentions that the Applicant gave a blow with the stick on the knee of the informant. At that time, the informant felt giddiness and fell down. After he regained consciousness, he saw that the Applicant was having a wooden stick in his hand. The accused were threatening the informant. The informant could not move his leg. He thought that his leg was fractured. He was unable to get up. After that, the accused left the spot. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the

incident is not correctly described in the FIR. Though there was a quarrel, the Applicant had not assaulted the informant with any weapon. He submitted that the Applicant's aunt has lodged an FIR about the same incident vide C.R. No. 28 of 2024 at the same Police Station on 03/02/2024 under section 354 and 504 of the Indian Penal Code. He submitted that the incident is captured on the C.C.TV footage which would show that the Applicant had not used any weapon and there was a quarrel between the informant and the Applicant. He submitted the the offence under section 326 of I.P.C. is not committed.

5. Learned APP produced the investigation papers before me which include the medical papers as well as the statements of other witnesses.

6. Learned counsel for the informant strongly opposed grant of any relief in this application. He submitted that the informant has suffered injuries.

7. I have considered these submissions. The medical papers produced before me mentioned that there was no

significant external injuries. The referral card dated 01/02/2024 mentions that there was tenderness and swelling on the right knee joint. There was no reference of spine fracture in that referral card. The medical papers of MGM College and Hospital dated 09/02/2024 mentions that the informant was diagnosed with L3 compression fracture with right knee ligament injury. The patient was managed conservatively with L-S belt and long knee brace.

8. The main question in this case would be whether the Applicant had used any weapon attracting the provision of Section 326 of the I.P.C. The fracture is possible by falling on the ground. In the FIR there is no clear allegation against the Applicant of using any weapon . The informant has merely stated that the Applicant had picked up a stick lying on the spot but he has not specifically mentioned that the Applicant had gave a blow with the stick on his back causing spine fracture. The other two witnesses Mohammad Kazi and Shardaprasad have stated about the quarrel and the fight but they have also not specifically stated that the Applicant had used any weapon. Thus the witnesses including the injured himself have not stated that the Applicant had assaulted

the informant with any weapon. Therefore it is extremely doubtful as to whether offence under Section 326 is made out. There is no fracture of the leg. Spine fracture is possible by a fall. In this view of the matter, the Applicant can be protected by an order of anticipatory bail. Hence the following order.

ORDER

- (i) In the event of his arrest in connection with C.R. No.27 of 2024 registered with Khandeshwar Police Station, Navi Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall co-operate with the investigation.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)