



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.438 OF 2024

IN

CRIMINAL APPLICATION (ABA) NO.157 OF 2024

(Kailash s/o Gulab Chavan Vs. 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. V.R. Thote, Advocate for the applicant.
Mr. U.R. Phasate, APP for the State.
Mrs. A.M. Raut, Advocate for assist to prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 21, 2024.

Heard.

2. By this application, the original complainant is seeking permission to assist the prosecution by engaging the Counsel.

3. In view of the contention raised in the application and the application is filed by the original complainant, permission is granted to engage the Counsel to assist the prosecution.

4. The application is allowed and disposed of accordingly.

CRIMINAL APPLICATION (ABA) NO.157 OF 2024

Heard.

2. By this application, the applicant is seeking pre-arrest bail. The applicant is apprehending arrest at the hands of police in connection with Crime No. 2/2024

registered with Police Station Bitargaon, District Yavatmal for the offence punishable under Section 307 of the Indian Penal Code, 1860.

3. The accusation against the present applicant is on the basis of report lodged by father of the injured namely Shankar Baban Chavan, who alleged that the present applicant is the maternal uncle of the co-accused namely Lakhan Banshi Rathod. The said Lakhan Banshi Rathod is the son-in-law of the informant. The marriage of his daughter was performed with Lakhan Banshi Rathod. His daughter was ill-treated and beaten by the present applicant as well as other co-accused. On the basis of the said report, the Police have registered the crime against the present applicant.

4. The learned counsel for the applicant submitted that as far as the role of the present applicant is concerned, his name is not mentioned in the FIR. The statement of the injured was recorded wherein also she has not stated the name of the applicant. Subsequently afterthought when the statement was recorded under Section 164 of the Code of Criminal Procedure, she has narrated the act of the present applicant and therefore, he has arraigned as an accused. Learned Counsel for the applicant submitted that even considering the allegation in a subsequent statement, the custodial interrogation of the applicant is not required. The assailant i.e. the husband of the injured is already arrested and behind the

bar. The allegations under Section 164 statement is to the extent that the present applicant and her brother-in-law hold her and thereafter, her husband and her father-in-law assaulted her. He submitted that nothing is to be recovered from the applicant. In view of that, he be protected by granting pre-arrest bail.

5. The learned APP strongly opposed the said application on the ground that in the statement under Section 164 of Code of Criminal Procedure, the injured has specifically narrated the role of the applicant. Subsequent to that also, he had filed a complaint against the present applicant alleging that the applicant used to instigate her in-laws and on his instigation she was assaulted by her in-laws. He submitted that considering the role of the applicant, his custodial interrogation is required and application deserves to be rejected.

6. Learned Counsel for the informant also raised some objections on contention that the injured has sustained the grievous injuries in the said incident. In view of the act committed by all the accused in furtherance of their common intention, the application deserves to be rejected.

7. After hearing learned counsel for the applicant, learned APP for the State and learned Counsel for the informant, perused the recitals of the FIR. As far as the allegation that the applicant has instigated the other

co-accused and hold her and thereafter, her husband assaulted her is not narrated by her in the initial statement. Subsequently, her statement under Section 164 was recorded wherein she first time alleged that the present applicant has hold her and thereafter, her husband and father-in-law assaulted her. Even considering the relation as it is admittedly, there is no allegation against the present applicant that he assaulted the injured. Therefore, his custodial interrogation is not required. Considering the gravity of the offence, the application deserves to be allwed by imposing certain conditions. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicant - Kailash s/o Gulab Chavan in connection with Crime No. 2/2024 registered with Police Station Bitargaon, District Yavatmal for the offence punishable under Section 307 of the Indian Penal Code, 1860, be released on anticipatory bail on executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the

investigating agency.

(iv) The applicant shall not enter into the village Bitargaon, Taluka Umarkhed, District Yavatmal till culmination of the trial.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*