



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

CRIMINAL APPLICATION (ABA) NO.796 OF 2023

(Dilip s/o Jethamalji Motwani and anr. Vs. The 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. S.D. Zoting, Advocate for the applicants.
Mr. A.R. Chutke, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 24, 2024

By this application, the applicants are seeking pre-arrest bail in the event of their arrest in connection with Crime No.424/2023 registered with Police Station Brahmapuri, District Chandrapur for the offences punishable under Sections 323, 324, 325, 326, 504, 506, 143, 147 read with Section 149 of the Indian Penal Code, 1860.

2. The accusation against the present applicants is on the basis of report lodged by Subhash Lalchand Motwani on an allegation that there was a previous dispute between the present applicants and the injured. On 28/08/2023, the informant received a phone call of applicant No.1. On 29/08/2023 at about 2.30 p.m. when the present applicant's son Pawan Motwani was in his shop at that time the complainant approached to him and asked about his father, thereafter Pawan Motwani and Gagan Motwani has left that place. When the complainant was in front of the petrol pump, he has seen the brothers

namely Pawan and Gagan Motwani holding the stick in their hands. It is further alleged that the present applicant No.1 has assaulted the father of the informant by means of iron rod on his head and applicant No.2 has assaulted the informant by means of iron rod, due to which the informant as well as his father has sustained the injuries. On the basis of said report, police have registered the crime.

3. Learned Counsel for the applicants submitted that due to the previous dispute this false report is lodged against the present applicants. In a cross-complaints the accused therein are already protected by granting anticipatory bail. Considering the circumstances under which the alleged incident has taken place and there is a previous dispute between the parties pending, the custodial interrogation of the present applicants is not required. In view of that, they be protected by granting anticipatory bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the vital role is attributed to the present applicants. Due to the assault, the father of the informant has sustained the grievous injuries in the nature of contused lacerated wound on head. The scan report of father of the informant shows that he has received the hairline undisplaced fracture of left parieto temporal bone and left mid zygomatic arch. It is further observed that extracalvarial soft tissue swelling

at left temporal region. Thus, the father of the informant has sustained the grievous injuries due to the assault by applicant No.1. He further submitted that the informant has also sustained two injuries; one is on head and another is on his left thigh above knee. Thus, considering the role attributed to the present applicants their custodial interrogation is required. In view of that application deserves to be rejected.

5. Having heard learned Counsel for the parties. Perused the investigation papers. There is specific allegations against the present applicants that applicant No.1 has assaulted the father of the informant and caused the grievous injuries by means of iron rod. The recovery of the iron rod is essential as well as applicant No.2 has also assigned the vital role of assaulting by means of iron rod to the informant. Considering the *prima facie* case which is made out from the recitals of the FIR and the investigation papers, their custodial interrogation is required for the recovery of the said iron rod. Moreover, the injured and his father have sustained grievous injuries in the said incident. Thus, *prima facie* case is made out. In view of that, the application deserves to be rejected.

6. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)