

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5397 OF 2015

1. Dhammapal s/o Sambhaji Paikrao,
Age: 30 years, Occ: Advocate,
R/o. Yelamb, Tq. Hadgaon,
Dist. Nanded.
Presently residing at Prakash Nagar,
Behind Central Bus Stand,
Aurangabad,
Tq. & Dist. Aurangabad.
2. Harshad s/o Gangadhar Paikrao,
Age: 27 years, Occ; Education,
3. Vishal s/o Ganesh Kamble,
Age: 27 years, Occ: Business,
4. Ramchandra s/o Dharba Paikrao,
Age: 46 years, Occ: Labour,
5. Dinesh s/o Ramesh Paikrao,
Age: 25 years, Occ: Labour,
6. Vijay s/o Khandu Paikrao,
Age: 35 years, Occ: Labour,
7. Bhagwan s/o Mahadu Paikrao,
Age: 42 years, Occ: Labour,
8. Bhaskar s/o Devrao Paikrao,
Age: 36 years, Occ: Labour,
9. Asidmani s/o Sambhaji Paikrao,
Age: 25 years, Occ: Labour,

All above R/o. Yelamb, Tq. Hadgaon,
District Nanded.

...Applicants

versus

1. The State of Maharashtra.
2. The Police Inspector,
Hadgaon Police Station,
Tq. Hadgaon, Dist. Nanded.

...Respondents

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Mr. S.W. Munde, Advocate for applicants
Mr. A.P. Basarkar, A.P.P. for respondents
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CORAM : N.W. SAMBRE, J.

DATE : 15th DECEMBER, 2015

ORAL ORDER :

The applicants are seeking pre-arrest bail, in connection with Crime No. 75 of 2015 registered at Hadgaon Police Station, District Nanded, for the offence punishable under Sections 395, 143, 147, 148, 149, 323, 324, 504 and 506 of the Indian Penal Code.

2. It is case of the present applicants that the First Information Report in question came to be lodged in view of differences between two class of people residing in the same village, who were having differences on religious issues. According to learned Counsel for the applicants, at the behest of present applicants, Regular Civil Suit No. 293 of 2015 was already filed seeking injunction from demolishing structure, which was constructed on Grampanchayat land, for which, admittedly there is no sanction from the competent authority. He would then urge that learned trial Court has already passed order of status quo on 05/08/2015.

3. In response to Court's query as regards sanction for the

construction of structure in question, he would urge that all applicants herein are ready and willing to furnish an undertaking before learned trial Court in the proceedings of R.C.S. No. 293 of 2015 that they shall not carry out further construction on said disputed site or shall not in any way disturb the possession thereon without permission of planning authority. According to him, the applicants are falsely implicated in the crime in question as sister of applicant No. 5 has already lodged complaint vide Crime No. 74 of 2015 against brother of complainant in Crime No. 75 of 2015 and as such, false implication of the applicants cannot be ruled out.

4. Learned A.P.P. while opposing the application would urge that the nature of allegations against the applicants are serious and because of differences in between the accused in Crime Nos. 74 of 2015 and 75 of 2015, there is law and order problem. It is further claimed by learned A.P.P. that the weapon used in the commission of the crime is required to be recovered and custodial interrogation of the applicants is necessary. According to him, the application is liable to be rejected.

5. Having bestowed my thoughts to the submissions made, bonafides of the applicants would be tested in view of their submissions that they shall furnish an undertaking in R.C.S. No. 293

of 2015 that they shall not carry out any activities, much less activity of construction on the disputed site, which is admittedly owned by Grampanchayat is located in village Yelamb, Taluka Hadgaon, District Nanded bearing Property No. 126 admeasuring about 1131 sq. ft. The applicants shall furnish such undertaking as volunteered by them within period of one week from today as submitted in para No. 3 of this order before this Court.

6. So far as merit of the matter is concerned, it is no doubt true that there are counter complaints bearing Crime Nos. 74 of 2015 and 75 of 2015. Crime No. 74 of 2015 came to be registered at the behest of sister of applicant No. 5 in this case and Crime No. 75 of 2015 came to be registered at the instance of brother of accused in Crime No. 74 of 2015.

7. *Prima facie*, it appears that both the crimes are registered so as to give counter blast to each other and as such, false implication of the applicants cannot be ruled out. Furthermore, the applicants having shown their bonafides with an intend to maintain harmony in the village. Hence, it will be appropriate, in my opinion, to order the release of the applicants on bail. Hence, I pass following order.

(a) In the event of arrest, the applicants be released on bail, upon furnishing P.R. bond of Rs.25,000/- with one surety in the like amount, by each of them, in connection with Crime No. 75 of 2015 registered at Hadgaon Police Station, District Nanded, for the offence punishable under Sections 395, 143, 147, 148, 149, 323, 324, 504 and 506 of the Indian Penal Code.

(b) All the applicants shall attend the concerned police station for a period of three days between 10-00 a.m. to 12-00 p.m. from 19th to 21st December, 2015 and thereafter as and when called for. If similar type of offence is again noticed at the behest of present applicants, and/or if the applicants violates the undertaking, prosecution will be at liberty to move for cancellation of bail.

(c) The applicants herein to furnish an undertaking before this Court that they shall not, in any manner, disturb the said structure as stated in claim clause of the Regular Civil Suit No. 293 of 2015 and shall also maintain harmony in the village. Such undertaking be furnished within period of one week from today by all the applicants.

(d) Copy of such undertaking be also made available to the Investigating Officer for appropriate record. If the undertaking, as stated is not furnished within the time stipulated, the Court will be constrained to

recall this order, if same is brought to the notice of this Court by the Investigating Officer.

8. With above observations, the application stands allowed.

[N.W. SAMBRE, J.]

Tupe/15.12.15