

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 137 OF 2015

Bhauso Dnyandeo Zagade. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 138 OF 2015

Bhauso Vitthal Zagade. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kuldeep Patil i/b. Mr. P.S. Hagare, advocate for Applicant.

Ms. Savita Prabhune, advocate for intervenor.

Mr. J.H. Ramugade, APP for State in ABA 137/15.

Ms. P.P. Shinde, APP for State in ABA 138/15.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 3, 2015

P.C.:

1 Not on board. Upon production taken on board.

2 Heard the learned Counsel for the applicants in both the applications, learned Counsel for the intervenor and Learned APP for State. Perused the papers.

3 These are the applications under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 415 of 2014 registered at Baramati Taluka Police Station for offence punishable under Section 307, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code.

4 It is the case of the prosecution that on 30/12/2014 complainant Nanaso Bapurao Zagade lodged a report at the police station alleging therein that on that day his father Bapurao Zagade had been to dairies in the village to supply milk and at that time the present applicants alongwith 6 others expressed their grievance against Bapurao over the gram panchayat election, which had taken place one year ago. That Shivaji Dadaram Zagade was the first person to start altercation. He had abused and assaulted Bapurao

with hockey stick. Thereafter, the others had also followed the suite. It is alleged that the present applicant i.e. Bhaurao Zagade who happens to be the accused No. 6 had assaulted Bapurao with fists and kick blows. He rescued himself from their clutches. They had in fact, threatened him of dire consequences and that they would eliminate him. He was saved by passers by and taken to Dr. Gavade's Hospital, Baramati. On the basis of his report Crime No.415 of 2014 is registered.

5 The injury certificate of Bapurao would show that he had sustained contusions and C.L.W. on right leg. He had sustained grievous injuries i.e. fracture of right ulna, fracture of right tibia, mid shaft and fracture of post aspect of right 12th rib. The overt act attributed to accused No. 6 is that he had assaulted with fists and kick blows.

6 Learned Counsel for the applicant has rightly submitted that the said grievous injuries are not by fists and kick blows. The learned

Counsel further submits that no specific overt act is attributed to accused No. 8 i.e. applicant in Criminal application No. 138/2015.

7 Perused the statement of the injured Bapurao. He has disclosed to the police that on 30/12/2014 he had gone to supply milk to dairies. At that time, Shivaji Dadaram Zagade and Namdeo Zagade came on motor cycle. They told him that they had lost gram panchayat election because of him. At that time, Namdeo had decided to eliminate him and had assaulted him with cycle chain which he had encircled to his waist. At that time, Shivaji had assaulted him with iron rod on his hand. That they have then called upon other accused persons. They had come alongwith sticks. They abused him and then assaulted him with hockey stick, cycle chain and iron rod. He has specifically attributed overt act to Shivaji Zagade and Namdeo. Namdeo has been arrested. Shivaji is wanted. Upon instruction from the Investigating Officer who is present in the court, learned APP submits that whereabouts of Shivaji are not known and that he is absconding. Upon perusal of the papers of investigation, it

prima facie appears that the investigating officer has not made any serious efforts to arrest Shivaji and he is rather being protected by the Investigating Officer.

8 The learned Counsel for the original complainant submits that at this stage, it would not be appropriate to segregate the roles attributed to the accused persons since the accused persons has shared a common object to assault Bapurao.

9 It appears from the papers of investigation that the motive of assault was the gram panchayat election which was held more than one year ago. During that one year they have been living peacefully in the same village. The accused and the complainant are distant relatives. It appears that the complainant and the other witnesses have also not assigned the real reason for assault as nothing had happened in the intervening period i.e. from the date of election.

10 The learned Counsel for the intervener submits that the accused persons have threatened the injured as well as other witnesses of dire consequences and hence, they would not be entitled to the discretionary relief under Section 438 of the Code of Criminal Procedure, 1973.

11 Taking into consideration the overt act attributed to the present applicants, papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicants have made out prima facie case for grant of pre-arrest bail. However, it is made clear that the co-accused i.e. Shivaji Zagade and others shall not claim parity with the present applicants in any manner. The arrested accused shall also not claim parity with the applicants.

12 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding the application for discharge or for quashing of the FIR or at the time of trial.

13 Hence following order is passed :

ORDER

- (i) Both the applications are allowed.
- (ii) In the event of arrest in C.R. No. 415/2014, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- each and one or two sureties in the like amount.
- (iii) The applicants shall report to the police station as and when called.
- (iv) The applicant shall not reside in village Shirsuphal till filing of the charge-sheet.

14 Both the applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)