

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 219 OF 2015

Jyotiram Harishchandra Kale

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Savita A. Prabhune for Applicant

Ms. Vira Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : FEBRUARY 16, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrested in crime no. 409 of 2014 registered at Baramati Taluka Police Station for offence punishable under sections 307, 452, 323, 324, 147, 148, 149, 504, 506 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that on 19/12/2014, complainant was sitting in the courtyard of his house, at that time, Prakash Taware and Sachin Nanaware had inquired with him as to why he had assaulted Sachin Nanaware. There was verbal altercation. Prakash Taware had threatened the

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complainant that he would get his associates to deal with him. After sometime, at about 9.00 pm, Prakash Taware had returned with his associates. One of them was present applicant. They had formed an unlawful assembly in front of the house of the complainant. They had inquired with the mother of the complainant about the whereabouts of complainant. She had informed them that he is indoors. They had entered the house, mounted assault upon the complainant with fist and kick blows. It is alleged that they had dragged the complainant out of the house and had mounted assault upon him. Mother of complainant had attempted to rescue him and at that time, she was also assaulted with fist and kick blows. It is alleged that present applicant had assaulted mother of the complainant with iron rod. She was injured. Thereafter, at the instance of Amol Mane, they all had been to the shop of Shahajan Shaikh. At that juncture, Amol Mane had assaulted Shahajan Shaikh. Present applicant happened to be principal of the unlawful assembly, right from the inception.

3) Perused injury certificates, mother of the complainant had sustained injuries on her head and back. Shahajan Shaikh had also sustained grievous

injuries. Learned counsel for the applicant has vehemently submitted that role attributed to the present applicant needs to be taken into consideration as it is not the case of prosecution that he had assaulted the complainant or Shahajan Shaikh, but he had assaulted mother of the complainant. According to the learned counsel, there was no premeditation and therefore, present applicant deserves grant of pre-arrest bail.

4) It is apparent that specific role has been attributed to the applicant. He had come to the scene of offence at the behest of Balasaheb Taware. It is apparent that the very purpose of revisiting was to terrorize the atmosphere. The old woman was trying to rescue her son, was assaulted. Common object of the unlawful assembly was to assault the complainant. Applicant, therefore, does not deserve grant of pre-arrest bail. It is a matter of record as submitted by the learned counsel for the applicant that co-accused have not yet applied for pre-arrest bail. Incident is dated 19/12/2014. Accused are still absconding.

5) In the present case, in the morning session, Constable was present in the Court, along with papers of investigation and this Court had perused the

papers of investigation. Matter was kept in the second session for enabling the learned counsel for the applicant to take instructions. Constable has left the Court with papers of investigation, even without informing learned APP. It is apparent on the face of record that there is no cooperation from the investigating agency. He was informed by the learned APP that the matter is kept in the afternoon session. It was incumbent upon him to wait till post lunch session. The Superintendent of Baramati shall take note of the conduct of the concerned constable.

ORDER

- (i) Application, being sans merits, is rejected.
- (ii) However, in the facts and circumstances of this case, in the eventuality that applicant appears before Court of concerned Magistrate, learned Magistrate shall consider the application on its own merits, without being influenced by the rejection of the present applicant.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)