

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 823 OF 2015

- 1) Vikrant @ Manchya Baliram Gulvi
- 2) Sharad Kashinath Gulvi
- 3) Ganesh Gadlya Gulvi
- 4) Sandip Kamalakar Patil
- 5) Mayur Namdev Patil
- 6) Ganpat Dattatray Patil
- 7) Manish Ananta Sutar
- 8) Sagar Sunil Jadhav

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Rajiv Patil, Senior Counsel i/b Mr. Onkar V. Warange for Applicant
Ms. Rutuja Ambekar APP for the State.
Mr. Prashant S. Tayade, P.S.I. Padgha Police Station, Thane.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 29th JUNE 2015

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 66 of 2015 registered at Padgha Police Station for offence punishable under sections 307, 326, 324, 323, 504, 506, 143, 147, 148 & 149 of Indian Penal Code.

2) It is the case of prosecution that on 01/05/2015, complainant was

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attending the marriage of Yogesh Jadhav. Similarly applicants herein were also attending the said marriage. One year prior to 01/05/2015, there was a quarrel between Vijay Patil and Hemant Gulvi over a trifling issue and ever since then they did not have cordial relation or were rather on enemical terms. It is alleged that on the day of incident, in the midst of ceremony, complainant Anesh Patil and others were enjoying the performances and were dancing to celebrate the marriage ceremony. It is alleged that one of the accused persons namely Naresh Gulvi had threatened Anesh Patil of dire consequences and had given a blow with a fighter on his right eye. Thereafter, the boys accompanying Naresh had mounted assault upon Vijay Patil. Specific roles are attributed to some of the accused. Vijay Patil had sustained grievous injuries and was required to be given sutures on his head. On the basis of the said report, crime no. 66 of 2015 was registered.

3) Perused papers of investigation. It appears from papers of investigation that Manish Sutar had lodged a report on 02/05/2015 in respect of the same incident. In the recitals of the F.I.R., it was stated that there was a marriage ceremony of Shailesh Patil and at that time, there was an altercation between group of Vijay Patil and group of complainant Manish Sutar. On the basis of

report filed by Manish Sutar, crime no. 68 of 2015 was registered against rival group i.e. group of complainant in crime no. 66 of 2015 for offence punishable under sections 324, 147, 149, 427 of Indian Penal Code and section 3 r/w 35 of Indian Arms Act. It is pertinent to note that Manish Sutar had sustained incised bone deep horizontal injury above neck at right ear. Incised wound on left pinna and complete amputation of right pinna. There was a grievous injury in the cervical region which was in the nature of incised wound 5 c.m. X 2 c.m. and several other injuries. Upon perusal of records, it appears that incident is admitted. Accused in crime no. 68 of 2015 have been granted pre-arrest bail mainly on the ground that Vijay Patil who had lodged report on the basis of which crime no. 66 of 2015 was registered had sustained serious and grievous injuries. What was taken into consideration by the Sessions Court is that marriage was of Shailesh Jadhav and not Shailesh Patil. Perused the statements of witnesses, more particularly statement of Yogesh which shows that he has a brother named Shailesh.

4) Learned senior counsel for the applicant submits that this would be an inadvertent error on the part of scribe of the F.I.R. and since complainant was in an injured state, he had not gone through the recitals of F.I.R. to verify and

correct the same.

5) In any case, it appears that on 01/05/2015, there was a free fight between two rival groups. Persons were injured on both the sides. There is a common reference to the injuries by applicants' group. Learned senior counsel rightly submits that this is a prima facie case of non explanation of injuries on the person of accused. Injury sustained by the applicants' group are not superficial injuries. It is apparent that there was amputation of ear and in spite of it, Investigating Officer has registered offence punishable under section 324 of Indian Penal Code. However, Investigating Officer of crime no. 66 of 2015 submits through learned APP that Investigating Officer in crime no. 68 of 2015 has added section 66 of 2015 of Indian Penal Code. There is no possibility of tampering with evidence. The applicants are also young. That incident has occurred on the spur of moment, without there being any premeditation.

6) Learned APP submits that applicant nos. 3 & 8 have similar criminal antecedents. The Hon'ble Apex Court in the case of **Sanjay Chandra Vs. CBI** wherein Hon'ble Apex Court has held that:

“The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to

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ensure that an accused person will stand his trial when called upon.”

The Hon'ble Apex Court further observed that:

“Antecedents of the man and socio-geographical circumstances have a bearing ----- . Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal.”

7) There is no possibility that applicants would abscond. It is an admitted position that it is a free fight. Hence, applicants deserve bail on imposing certain conditions.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- each with one or two solvent sureties in the like amount.
- (iii) Applicants herein shall report to concerned police station on four consecutive Sundays commencing from 05/07/2015 between 10.00 a.m. to 01.00 p.m. and co-operate with the investigating agency to the best

of their capacity.

(iv) Applicants herein shall not reside within the jurisdiction of Padgha Police Station for a period of 4 weeks from today.

(v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)