

IN THE HIGH COURT OF JUDICATURE, AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1425 OF 2015

Shahir Vitthal Malme	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1426 OF 2015

Dilip Vitthal Malme	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1427 OF 2015

Pandit Vitthal Malme	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1359 OF 2015

Hanmant Shankar Narale	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1360 OF 2015

Usha Hanmant Narale & Anr.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. Umesh R Mankapure, Adv. for the applicant in ABA No.1425 of 2015 to ABA No.1427 of 2015.

Mr. Jaydeep Mane, Adv. for applicant in ABA No.1359 & 1360 of 2015.

Y M Nakhawa, APP for State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 7th December, 2015.

P.C. :

1. These are applications for anticipatory bail filed by the aforesaid applicants apprehending their arrest in C R No.198 of 2015 registered at Sangola Police Station for the offences punishable under Sections 436, 323, 143, 145, 147, 148, 149, 504 & 506 of the IPC.

2. The applicants are alleged to have formed an unlawful assembly and set fire to the dwelling house of Ramesh Gujale. The applicants are also alleged to have assaulted and insulted the complainant and his family members.

2. Mr. Mankapure, the learned counsel for the applicants Shahir, Dilip and Pandit, has submitted that there is a civil dispute pending between the complainant and the applicants herein. He has further submitted that the property wherein the house is situated was purchased by the applicants herein. He has further submitted that the complainant has no title to the said property and that the house in question was not in possession of the complainant. He claims that the applicants have been falsely implicated.

3. Mr. Mane, the learned counsel for the applicants Hanmant,

Usha and Shalan submitted that the FIR does not prima facie show that these applicants were involved in setting fire to the house. He has also stated that the complainant was not in possession of the said residence and that the said residence was not used by the complainant as a dwelling house. He, therefore, submitted that the essential ingredients of section 436 are not made out.

4. Mr. Nakhawa, the learned APP for the State submitted that the complaint prima facie shows that Hanmant had entered the property with an intention of setting fire to the house. He has further submitted that the complaint prima facie discloses that all these applicants are involved in setting fire to the dwelling house of the complainant. He has further submitted that the offences are of serious nature and requires thorough investigation.

5. I have perused the records and considered the submissions advanced by the learned counsel for the applicants and the learned APP for the State. The records prima facie reveal that Ramesh Gujale had lodged a FIR dated 7th August, 2015 stating that on the same date at about 2.30 pm when he had gone to his property by the side of Masoba road, he had seen the applicants and some others in the

saidBA No property. He has stated that the applicant Hanmant had told him that the said property is recorded in the survey records in his name and that they had come to take possession of the same. Said Hanmant further threatened to set fire to the house if the complainant refused to handover the possession of the same. The complainant has stated that he had informed the applicants and others that the dispute regarding the said property is already pending before the Civil Court. He has stated that the applicant and others abused and assaulted him by kicks blows and by means of an iron rod. The complainant has stated that the applicants had also assaulted his wife. The complainant further states that thereafter Hanmant, Vilas and Raju had set fire to the house.

6. The complaint thus prima facie reveals that the applicants Shahir, Dilip and two others had set fire to the house of the complainant. Though the complaint does not specifically state that the applicant Hanmant had actually set fire to the house, the averments made in the complaint reveal that the applicant Hanmant had given threats of setting fire to the house as soon as he entered the property. Hence, at this stage, it cannot be said that the applicant No.1 had no intention of setting fire and that he had no role in the

said incident.

7. The scene of offence panchnama also prima facie reveals that the house as well as the household articles from the said house were totally burnt. The said panchnama further reveals that there was an iron bed in the said house. Thus, apart from the statements of the witnesses, the scene of offence panchnama also prima facie reveals that the said house was used as a dwelling house. Thus there is prima facie material to show the involvement of Shahir and Pandit (applicant in ABA No.1425 of 2015), Dilip (applicant in ABA No.1426 of 2015) and Hanmant (applicant in 1359 of 2015) in committing the offence under Section 436 of the IPC which is punishable with imprisonment for life or imprisonment for 10 years and fine. The offence is of serious nature. The gravity of the offence itself disentitles the applicants from securing anticipatory bail.

8. The records prima facie reveal that the applicants Pandit in ABA No.1427 of 2015, Usha and Shalan in ABA No.1360 of 2015 were not involved in committing the offence under Section 436 of the IPC. Their role is restricted to committing the other offences which are not of serious nature. Considering the above facts and

circumstances, in my considered view, these applicants are entitled for bail under the following terms.

1. Under the circumstances and in view of discussion supra, ABA No.1425, 1426 and 1359 of 2015 are dismissed.
2. ABA Nos.1427 of 2015 and ABA No.1360 of 2015 are allowed. In the event of arrest of the applicants in C R No.198 of 2015 registered at Sangola Police Station, the applicants shall be released on bail bond of Rs.15,000/(Rupees Fifteen Thousand Only) each with one or two sureties in the like amount to the satisfaction of the Sessions Judge, Pandharpur.
3. The above applicants in ABA No.1427 of 2015 and 1360 of 2015 shall report to investigating officer for 7 days from 10 am to 1 pm and further as and when required by the investigating officer for the purpose of interrogation.
4. The applicants shall not tamper with the evidence or influence the complainant and witnesses, in any manner.

(ANUJA PRABHUDESSAI, J.)