

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.657 of 2014

(Akush Ramesh Gadekar and others

vs.

The State of Maharashtra, through P.S.O. Murtizapur, District Akola)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 19, 2015.

Mr. Y.B. Mandpe, the learned Counsel, at the outset submits that he is not pressing the present application in respect of applicant nos.1, 3 and 4.

The application thus is not pressed for applicant nos. 1, 3 and 4.

Learned Counsel Mr. Mandpe for applicant no.2 submits that the applicant is before this Court apprehending his arrest in connection with Crime No.135/2014, registered at Police Station Murtizapur for the offences punishable under Sections 147, 148, 324, 354(AB), 506 read with Section 149 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The submission of the learned Counsel for the applicant is, the incident alleged is nothing but an outcome of a political rivalry. He further submits that an opportune time

was selected by the complainant only to implicate the applicants in the alleged commission of crime. He further submits that insofar as applicant no.2 is concerned, no role is played by the applicant, and even assuming, though not admitting, some role is played by Ramdas, the role played by him would not fall under the alleged act of offence. At the most the present applicant was a silent spectator or a facilitator intervening in an incident to pacify the incident. The learned Counsel further submits that on the backdrop of such insufficient material, neither the custodial interrogation of the applicant is necessary nor he can be denied of the protection of pre-arrest bail.

Mr. M.J. Khan, the learned A.P.P. vehemently opposes the application and made available the material collected by the Investigating Officer.

Firstly it will have to be seen that the allegations against this applicant are of the offences under the Indian Penal Code as well as under the Atrocities Act. It is now the settled position of law that considering the bar of such protection, such protection can be granted in rare cases, where either the report itself is leading to a conclusion of an imaginary report or the contents are so far fetched that an element of suspicion is created in the mind of the Court. Such protection can be granted to a person on the backdrop of the material and if the material shows that it is silent on aspect of any overt act of the

applicant, the custodial interrogation of such applicant would not at all be necessary. In view of these principles, if the present matter is seen, on the backdrop of the submission of the learned Counsel for the applicant, the material reflects otherwise. The learned Counsel for the applicant submits that on the backdrop of a rivalry between the groups an opportune time was selected by the complainant/informant, but the complainant states that she came to parental home along with her husband for providing medical assistance. If such a ground is there to shift somebody from A place to B place, that cannot be termed as an opportune time selected. Insofar as the other submission of the learned Counsel for the applicant that the report is practically silent on the aspect of the role played by the applicant, the report very specifically states that on 04/06/2014, in the late hours of the day i.e. at 10:00 p.m., accused Amol came in front of the house of the complainant's father and started easing. The complainant raised her objection for such a act of Amol. Amol by abusing and misbehaving the the complainant gave reply to her. While Amol was indulged in such a act, the applicant-Ramdas caught hold the complainant-victim. On hearing hue and cry made by the victim/complainant, the other persons gathered on the spot. The report further states that the other accused were carrying sticks and also an assault was led with axe and sticks.

The learned A.P.P. made available the material collected in the process of investigation so far. The victim was subjected to medical examination. The medical certificate shows injuries caused to the victim. Insofar the statement recorded by the investigating agency apart from the family members of the complainant, there are as many 3 to 4 statements of the independent witnesses, who are the residents of the locality and are not the family members. These witnesses in their statements in chorus state that Amol was armed with an axes and he misbehaved with the complainant, torn her clothes, broken her bangles and thereby she suffered injuries. These witnesses state that applicant-Ramdas was not only present on the spot, but he was holding the hands of the victim.

If the submission of the learned Counsel for the applicant is accepted, the situation would have been otherwise. The situation would have been the interference of the applicant to stop Amol, who was misbehaving with a lady and not to hold the hands of the victim to facilitate somebody, who was misbehaving with a lady. As the investigation is in the initial stage and on the backdrop of the report lodged by the victim and on the backdrop of the fact that there is a long standing enmity between two groups and the present applicant is the member of one of the groups, in my opinion, this is not a case to grant protection to the applicant. The application thus deserves to be

rejected and the same is accordingly rejected.

Needless to state that interim protection granted to the applicant-Ramdas stands vacated. It is further stated that these observations of the Court are for considering the prayer of pre-arrest bail of the applicant.

The application is disposed of as such.

JUDGE

**sdw*