**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 459 OF 2016**

1. Devidas s/o Sundarrao Ambekar,

2. Ambadas s/o Sundarrao Ambekar,

3. Kashinath s/o Sundarrao Ambekar,

4. Raju s/o Janardhan Ambekar ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr A.S. Usmanpurkar, Advocate for applicants;
Mr S.Y. Mahajan, Addl. Public Prosecutor for respondent

**CORAM : N.W. SAMBRE, J.**

**DATE : 16th February, 2016**

**ORDER :**

By the present application under section 438 of the Code of Criminal Procedure, the applicants are seeking their release on pre-arrest bail, in connection with C.R. No.175 of 2015, registered with police station, Partur, Dist. Jalna, for offences punishable under sections 143, 147, 148, 149, 326, 323, 452 and 504 of the Indian Penal Code.

2. Learned Counsel appearing on behalf of the applicants, upon instructions, submits that he does not press the application for applicant no.3 Kashinath s/o Sundarrao Ambekar, as this Court is not inclined to grant protection to him under section 438 of the Code of Criminal

Procedure. Thus, the application at the behest of applicant no.3 Kashinath s/o Sundarrao Ambekar stands dismissed as not pressed.

3. It is the case of the prosecution that the applicants herein formed an unlawful assembly and have brutally assaulted the complainant and his family members.

4. While trying to make out a case for grant of pre-arrest bail to applicants no.1, 2 and 4, learned Counsel appearing on behalf of the applicants would urge that it is an admitted fact on record that between the family of the complainant and the applicants a civil dispute, in relation to agricultural land is pending before the competent civil court and also the revenue authorities. According to him, the scuffle in question ensued, as the applicants herein have noted that the complainant, while moving an application for measurement, has shown that the said application was consented by the family of the applicants. Having noted that there is a fraud practiced by the complainant on the applicants, the scuffle ensued.

5. Learned Counsel would then urge that there is counter first information report, registered at the behest of the family members of the applicants vide C.R. No.174 of 2015, for offences punishable under sections 143, 147, 148, 149, 326, 323 and 504 of the Indian Penal Code.

6. Learned Counsel would then urge that the investigation does not depict a specific role of applicants no.1, 2 and 4 in commission of the

crime in question and as such, they be released on pre-arrest bail.

7. Learned Addl. Public Prosecutor opposed the application on the ground that there are eye-witnesses to the incident and has invited my attention to that effect, to the case diary. He would then urge that two persons, namely, Dadarao and Rukhminibai have suffered grievous injuries.

8. From the investigation papers it is noted that a specific role of assaulting the complainant by an axe on his head is attributed to applicant no.3 Kashinath s/o Sundarrao Ambekar, whose application is not pressed. So far as the injury suffered by Rukhminibai is concerned, the investigation papers do not depict any role of applicants no.1, 2 and 4. In view thereof, in my opinion, custodial interrogation of applicants no.1, 2 and 4 is not necessary.

9. In view of above, in my opinion, the applicants are entitled to be released on pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicants no.1, 2 and 4, namely, Devidas s/o Sundarrao Ambekar, Ambadas s/o Sundarrao Ambekar and Raju s/o Janardhan Ambekar, in connection with C.R. No.175 of 2015, registered with police station, Partur, Dist. Jalna, for offences punishable under sections 143, 147, 148, 149, 326, 323, 452 and 504 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicants no.1, 2 and 4 shall attend the concerned police station initially on 22nd and 24th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

The applicants keep themselves away from the jurisdiction of the concerned police station till filing of the charge-sheet.

Criminal Application stands allowed in above terms.

**(N.W. SAMBRE, J.)**

amj