

(1)

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

CRIMINAL APPLICATION NO. 6896 OF 2015

Anita w/o Machindra Kale,
Age: 34 years, Occ: Agri.,
R/o. Astagaon, Tq. Parner,
Dist. Ahmednagar.

..APPLICANT

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Supa Police Station, Tq. Parner,
Dist. Ahmednagar.
2. Jalindar Dattatraya Kale,
Age: 28 years, Occ: Social Worker,
3. Dada Rajendra Kale,
Age: 25 years, Occ: Social Worker,
4. Sachin Ashok Kale,
Age: 28 years, Occ: Service,
5. Ravindra Dadabhau Kale,
Age: 35 years, Occ: Agri.,
6. Dada Bhausahab Kale,
Age: 35 years, Occ: Agri.,
7. Bhausahab Natha Kale,
Age: 62 years, Occ: Agri.,

All R/o. Astagaon, Tq. Parner,
Dist. Ahmednagar.

..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 873 OF 2016

The State of Maharashtra

...APPLICANT

(2)

VERSUS

1. Jalindar Dattatraya Kale,
Age: 28 years, Occ: Social Worker,
2. Dada Rajendra Kale,
Age: 25 years, Occ: Social Worker,
3. Sachin Ashok Kale,
Age: 28 years, Occ: Service (MIDC),
4. Ravindra Dadabhau Kale,
Age: 35 years, Occ: Agri.,
5. Dada Bhausahab Kale,
Age: 35 years, Occ: Agri.,
6. Bhausahab Natha Kale,
Age: 62 years, Occ: Agri.,

All R/o. Astagaon, Tq. Parner,
Dist. Ahmednagar.

..RESPONDENTS

Mr N.B. Narwade, Advocate for applicant in Criminal Application No. 6896 of 2015;
Mr C.V. Dharurkar, Addl. Public Prosecutor for applicant in Criminal Application No. 873 of 2016 and for respondent No.1 in Criminal Application No. 6896 of 2015;
Mr R.R. Karpe, Advocate for respondents-accused

CORAM : A.S. CHANDURKAR, J.**DATE : 9th DECEMBER, 2016****ORAL ORDER :**

By the present application, the informant
as well as the State of Maharashtra through its

(3)

Prosecutor pray that the order dated 3rd November, 2015 granting pre-arrest bail to the respondents-original accused be cancelled.

2. The respondents – original accused apprehending their arrest in Crime No. I-147 of 2015 registered with Supa Police Station, Taluka Parner, District Ahmednagar for the offences punishable under Sections 326, 143, 147, 148, 149, 323, 504, 506 and 427 of the Indian Penal Code had approached the Sessions Court for interim protection. On 7th October, 2015 ad interim protection was granted and the notice was issued to the State. Thereafter, the present applicant filed application opposing the grant of anticipatory bail. Similarly, say was also filed by the Investigating Officer. On 3rd November, 2015 the learned Sessions Judge allowed the application moved by the respondents – original accused and confirmed the interim protection granted earlier.

3. It is submitted by the learned Counsel for

(4)

the informant that the offence registered against the accused persons was under Sections 326, 143, 147, 148, 149, 323, 504, 506 and 427 of the Indian Penal Code and considering the gravity of the offence, interim protection could not have been granted. It was submitted that the victim had been assaulted on the head resulting in grievous injuries and was required to be hospitalized. The said victim was unconscious for considerable period of time and without noticing this relevant fact, the interim protection came to be granted. It was submitted that in the first information report, there was specific reference to the assault on the head by respondent No.3 — Dada. Without facilitating the recovery of the wooden weapon by the Investigating Officer, the order came to be passed. It was further submitted that on 26th October, 2015 F.I.R. No. I-169 of 2015 was lodged by present applicant on account of threats given by the respondents and this fact was also not considered. Reference was also made to the medical treatment given to the victim as well as the

(5)

statement of one Dinkar Pathare to indicate that the victim had not recovered and he was not in a position to speak. It was, therefore, submitted that on these counts, the protection granted was liable to be withdrawn. For the said purpose, the learned Counsel for the applicants placed reliance upon the decisions of the Hon'ble Supreme Court in Puran vs. Rambilas and another, AIR 2001, SC 2023 and Dinesh M.N. (S.P.) vs. State of Gujarat, AIR 2008 SC 2318.

4. The aforesaid submissions were supported by the learned Additional Public Prosecutor. He submitted that the State had opposed the prayer for grant of anticipatory bail and without considering the relevant material, same came to be granted.

5. Both the applications are opposed by the learned Counsel for the respondents – accused by submitting that no case has been made to cancel the protection already granted. It was submitted that considering the documents indicating the treatment

(6)

given to the victim, the offence punishable under Section 326 of the Indian Penal Code was not made out. It was pointed out from the medical certificate dated 6th October, 2015 that there was no external injury noticed on the victim and that he had been discharged from the hospital on 29th October, 2015. From the hospital papers, endorsement dated 28th October, 2015 was referred in which it was stated that relatives of the victim did not want discharge of the said patient. It was submitted that almost period of one year had passed since the order granting interim protection was passed by the learned Sessions Court and there was no complaint against the said respondents. The charge sheet had been now filed and therefore, at this stage there was no need to revoke the earlier order. The learned Counsel placed reliance upon the judgment of the learned Single Judge in Criminal Application No. 2624 of 2015 (Kum. Mahima d/o Santosh Jain vs. The State of Maharashtra, through Incharge – MIDC Police Station, Aurangabad and another) decided on 21st July, 2015.

(7)

6. I have perused the material placed on record. As per the first information report, it was stated that respondent No. 3 herein had assaulted the victim with a wooden weapon on his head, while other accused had assaulted him with fist and kicks. Perusal of the medical papers placed on record by the applicant indicates that the victim was admitted in the hospital on 26th September, 2015 and was discharged on 29th October, 2015. The endorsement on 6th October, 2015 refers to absence of any external injury on the victim's head. As per C.T. scan of the brain conducted on 28th October, 2015 no haemorrhage was noticed. The certificate dated 28th October, 2015 refers to the endorsement by Doctor that relatives did not want discharge. The learned Sessions Judge while passing order dated 3rd November, 2015 has referred to the documents issued by the hospital along with medical papers. The subsequent first information report dated 26th October, 2015 bearing No. 169 of 2015 has been reported against some of the accused

(8)

persons stating therein that threats have been given to the information. The report dated 26th October, 2015 and its reference has been made in the order dated 3rd November, 2015. The learned Sessions Judge did not find said aspect very relevant while confirming the interim protection.

7. The principles to be kept in mind while considering the prayer for cancellation of bail have been laid down by the Hon'ble Supreme Court in Puran and Dinesh M.P. (supra). It has been observed that while setting aside the order granting bail, the same can be done if the order passed is unjustified, illegal or perverse. It has been further observed that the Court can consider whether any relevant circumstances have not been taken in to consideration while granting bail.

8. In the facts of the present case and material on record, the victim was under treatment from 26th September, 2015 till 29th October, 2015. His initial C.T. scan was conducted on 28th

(9)

September, 2015 but the same did not disclose any haemorrhage and eight days thereafter no external injury was also noticed. Though it is true that the victim was assaulted on his head and was required to undergo treatment, considering the medical report filed on record which indicates absence of any haemorrhage on 28th September, 2015, I do not find that by granting any interim protection, the learned Sessions has passed perverse order. It is to be noted that this order is in operation since 3rd November, 2015, after which there is no breach of conditions imposed in the order. Further progress in investigation in Crime No. 169 of 2015 has not been brought on record and the learned Sessions Judge also did not find it very relevant while confirming the interim order. In the light of aforesaid law laid down, I do not find that the order dated 3rd November, 2015 could be termed as perverse. There are no supervening circumstances that warrant cancellation of the aforesaid order. Moreover, the charge sheet has now been filed on 30th July, 2016. Hence, I am

(10)

not inclined to entertain the applications favourably. The applications are accordingly rejected with no order as to costs. It is clarified that observations as made are only for deciding the present applications.

(A.S. CHANDURKAR, J.)

Tupe