

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2790 OF 2016

1] Khalil Baig S/o Husain Baig

2] Shakil Baig S/o Khalil Baig

3] Jamil Baig S/o Khalil Baig

4] Ayubkhan S/o Rasulkhan

5] Imran Khan S/o Ayubkhan

.. Applicants

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. N.E. Deshmukh, Advocate for the applicants

Smt. R.P. Gour, APP for the respondent-State

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CORAM : N.W. SAMBRE, J.

DATE : 15/06/2016

ORAL ORDER :

Heard.

2. The applicants are seeking pre-arrest bail in Crime no. 8 of 2016 registered at Yawal Police Station, Yawal, Dist. Jalgaon for the offences punishable under section 379, 383, 447, 504, 506 r/w. 34 of the Indian Penal Code.

3. Complainant – Mohan on 19/1/2016 lodged a complaint under section 156(3) of the Code of Criminal Procedure claiming that he being power of attorney holder of the land owners/possessors Shantabai and Vasantibai, was cultivating 49 R of land adjacent to the land of the applicants. When the applicants removed 10 bags of the farm produce from his field, in the vehicle bearing no. MH-19 BJ-2422, it is then claimed that they lodged a complaint with the Police Station alongwith 7/12 extract and other papers. Since the Police had not taken any cognizance of his complaint, which was subsequently also sent by R.P.A.D. to the Police Station, he was then constrained to file a complaint as referred supra, of which cognizance was taken on 19/1/2016 by the learned Judicial Magistrate First Class, Yawal, Dist. Jalgaon, by ordering investigation in the matter and crime no. 8 of 2016 came to be registered on 22/1/2016 for the offences punishable under section 379, 383, 447, 504, 506

r/w. 34 of the Indian Penal Code.

4. While trying to make out case for grant of pre-arrest bail, learned counsel for the applicants submits that the parties to the proceedings were litigating in Regular Civil Suit No. 65 of 1997, which was for the permanent injunction. According to him, the suit was decreed on August 25, 2003 and the appeal against the same is still pending at the behest of the applicants. The learned counsel for the applicants submits the applicants are the original owners of the property and it is only by virtue of the tenancy, the land remained in possession of the opponent. He would submit that it is with intention to falsely implicate the applicants in the crime in question, as to get rid of the civil proceedings, a false complaint is registered against the applicants.

5. Learned A.P.P. opposed the application on the ground that the complainant has promptly

approached the Police authorities as is apparent from the contents of the complaint. The learned Magistrate having been satisfied about the contents of the complaint, has ordered issuance of process. Learned A.P.P. then submits that there are independent witnesses, who speak about the involvement of the applicants and as such the application be rejected.

6. From the perusal of the documents as are placed before this Court, it is required to be noted that the parties to the present proceedings are litigating in civil proceedings. Prima facie, it appears that the complainant has named each of the accused and the role attributed to each of them particularly by Khalil Baig is required to be taken note of. In my opinion, the applicant no.1 – Khalil Baig is not entitled for protection from this Court in the light of the allegations made against him and specifically the fact that he has already suffered a decree in the civil suit.

7. So far as the remaining applicants are concerned, in view of absence of any prima facie material against them, they are entitled to be released on pre-arrest bail. Hence, the following order :-

8. Application of applicant no.1 – Khalil Baig S/o Husain Baig stands rejected.

9. In the event of the arrest of the applicant no.2-Shakil Baig S/o Khalil Baig, no.3-Jamil Baig S/o Khalil Baig, no.4-Ayubkhan S/o Rasulkhan and no.5-Imran Khan S/o Ayubkhan in Crime no. 8 of 2016 registered with Yawal Police Station, Yawal, Dist. Jalgaon for the offences punishable under section 379, 383, 447, 504, 506 r/w. 34 of the Indian Penal Code, they be released on bail upon their executing P.R. bonds in the sum of Rs.15,000/- (Rs. Fifteen Thousand) each with one surety each in the like amount.

10. These applicants shall attend the concerned Police Station on 25th and 26th June, 2016 between 10 am and 12 noon and thereafter as and when called by the Investigating Officer.

11. The applicants shall not tamper with the prosecution evidence or issue threats to the complainant or to the witnesses.

12. Criminal Application stands disposed of accordingly.

[N.W. SAMBRE]
JUDGE

arp/-