

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

Criminal Application No. 4109 of 2016

District : Aurangabad

Ayodhya w/o. Kalyan Thombre,
Age : 29 years,
Occupation : Household,
R/o. Gut No. 100, Plot No. 47,
Beed Bypass, Naiknagar,
Deolai,
Taluka & District : Aurangabad. .. Applicants.

versus

The State of Maharashtra,
Through Chikalthana Police Station,
Aurangabad. .. Respondent.

With

Criminal Application No. 4110 of 2016

District : Aurangabad

1. Kalyan s/o. Kacharu Thombre,
Age : 39 years,
Occupation : Business,
R/o. Gut No. 100,
Plot No. 47, Beed Bypass,
Naiknagar, Deolai,
Taluka & District : Aurangabad.
2. Sanjay s/o. Kacharu Thombre,
Age : 41 years,
Occupation : Agriculture,
R/o. as above. .. Applicants.

versus

The State of Maharashtra,

Through Chikalthana Police Station,
Aurangabad.

.. Respondent.

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*Mr. B.N. Magar & Mr. J.V. Deshpande, Advocates,
for applicants.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 18TH AUGUST 2016

ORAL ORDER:

Applicants, who are accused in Crime No. I-128/2016 for offences punishable under Sections 307, 323, 325, 326, 143, 147, 148, 504 and 506 of the Indian Penal Code, registered with Police Station, Chikalthana, Aurangabad, by these applications, are praying for pre-arrest bail.

2. Heard the learned Counsel for applicants. He argued that applicants are falsely implicated in the crime, in question, because of dispute over playing cricket in the locality.

3. The learned Addl. Public Prosecutor opposed the application on the ground that the crime, in question, is serious. He argued that there are eye witnesses to the incident in question.

4. Perused the papers of investigation including FIR lodged by Shamrao Bhavrao Rathod on 18.06.2016. According to the prosecution case, Achyut Chavan is nephew of injured informant Shamrao Rathod. Achyut Chavan informed Shamrao Rathod, that his neighbours are pelting stones on his house and are threatening to kill him. Therefore, informant Shamrao Rathod, accompanied by his son Gorakshanath and wife Sagarbai rushed to the house of his nephew Achyut Chavan. According to the prosecution case, when they reached at the house of Achyut Chavan, one old person assaulted informant Shamrao Rathod by means of iron rod. Thereafter, unknown 3 - 4 women and 6 - 7 men, who were armed with axes and iron rod, assaulted all three of them. The informant reported that one of the assailants was declaring that he is Corporator of the locality and he will murder the informant.

5. Section 307 of the Indian Penal Code does not require causing of any injury by the accused. Intention coupled with overt act is sufficient to constitute the offence punishable under Section 307 of the Indian Penal Code. However, nature of weapon and nature of injury are guiding factors in the offence punishable under Section 307 of the Indian Penal Code. In the case in hand, perusal of injury certificate of informant Shamrao and his son Gorakshanath will make it clear that injured have

suffered simple injuries in the nature of blunt trauma. As such, whether assailants intended to commit murder of the informant and his son will have to be decided in the trial. Prima facie, it is seen that in the assault, simple injuries are caused. Even the injury certificate does not show that the informant or his son have suffered grievous hurt.

6. In that view of the matter, custodial interrogation of present applicants is not warranted and, therefore, the order :-

(i) Both applications are allowed.

(ii) Orders dated 4th August 2016, granting pre-arrest bail to applicants, are confirmed on the same terms and conditions.

(iii) As a condition of this order, applicants shall attend concerned Police Station on every alternate Sunday, in between 11.00 a.m. and 01.00 p.m., till filing of charge-sheet and they should cooperate the Investigating Officer in investigation of the crime, in question.

(iv) In addition, applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him / her

(5)

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from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence.

7. Applications stand disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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