

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

6 CRIMINAL APPLICATION NO. 4868 OF 2016

JANARDHAN S/O RAGHUNATH PAWAR

VERSUS

THE STATE OF MAHARASHTRA

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Mr. N.D.Sonavane, Advocate for Applicant.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 15th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 84/2016 registered at Shivur police station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable U/ss 307, 143,147,148,149,324,323, 504 of the Indian Penal Code, by this application is praying for pre-arrest bail.

2. Heard the learned counsel for the applicant. He argued that the role attributed to the present applicant is that of assaulting Bhimabai by means of a wooden log. He further argued that Deepak Pawar, who is similarly placed as accused

is granted pre-arrest bail by the learned Additional Sessions Judge.

3. The learned A.P.P. opposed the application by contending that as Section 149 of the Indian Penal Code is invoked by the prosecution, individual role of the accused is of no significance. The learned A.P.P. by drawing my attention to the statement of witnesses submitted that the applicant and co-accused formed an unlawful assembly, indulged in rioting and they had an intention to commit murder of prosecuting party.

4. Perusal of F.I.R. lodged by Rahul Popat Pathare so also statements of eye witnesses goes to show that the present applicant, his son Deepak Pathare and 3 of his associates were doing agricultural operation in the field bearing G.No. 123. At that time, injured Popat Pathare told them that they should not remove or damage the thorns in his field. Upon that, as per the version of the prosecution, the present applicant and his associates rushed at Popat Pathare and the members of the prosecuting party. They assaulted the members of the prosecuting party.

5. Though it is alleged that Popat Pathare was assaulted by means of an Axe, his injury certificate shows that he suffered 3 contusions and one contused lacerated wound. Those are reported to be simple injuries. Injured Sumanbai, Chandrakalabai, Bhimabai and Rahul have also suffered simple injuries. Injured Baburao suffered one simple

contusion and 2 contusions which are stated to be grievous in nature causing fracture to radius and mid-shaft as well as Ulna.

6. For making each accused person vicariously liable for the act done by others, *prima facie* one has to come to the conclusion that the accused persons have formed an unlawful assembly forming common object. The object is always entertained in the human mind. It being mental attitude, no direct evidence can be available in inferring common object. It has to be gathered from the acts which the persons commit and result therefrom. Common object can also be reasonably collected from the nature of the assembly. In the case in hand, the present applicant and his associates were doing agricultural operations in their field. It was upon the utterance of Popat Pathare that they should not damage thorns in his field, that the present applicant and co-accused indulged in assaulting Popat Pathare and his family members. The incident took place on the spur of moment. *Prima facie*, it does not appear that each and every accused was having common object of committing murder of the members of prosecuting party. Even the injuries suffered by Baburao Pathare, which are stated to be grievous, are on his arms. Therefore, *prima facie*, it is difficult to make each and every member of accused party vicariously responsible for the acts done by the other members.

7. So far as the offence punishable u/s 307 of the Indian Penal Code is concerned, what is material is the

intention coupled with overt act. In the case in hand, injuries suffered by almost all members of the prosecuting party are simple in nature except the injuries suffered by Baburao Pathare, which are in the nature of fracture of arms. Therefore, again the question will be whether the accused persons and the present applicant intended to commit murder of the members of the prosecuting party. Ultimately, in every probability, the offence may turn out to be the one u/s 326 of the Indian Penal Code.

8. Considering the accusation against the present applicant and the role attributed to him in the crime in question, custodial interrogation of the present applicant is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) In the event of his arrest in Crime No. 84/2016 registered at Shivur police station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable U/ss 307, 143, 147, 148, 149, 324, 323, 504 of the Indian Penal Code, applicant Janardhan s/o Raghunath Pawar be released on bail on executing P.R. Bond of ₹ 20,000/- [Rupees Twenty Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall attend the concerned police station on 21/09/2016 and 28/09/2016 in between 11.00 a.m. and 1.00 p.m. and he should co-operate the Investigating Officer in the investigation of the crime in question.

9. The Criminal Application stands disposed of.

[A.M.BADAR, J.]