

Criminal Application No. 5152 of 2016

District : Aurangabad

- versus**

.....

.....

DATE : 28TH SEPTEMBER 2016

ORAL ORDER:

Applicants / accused in Crime No. 266/2016 registered with Police Station, Pachod, Taluka Paithan, District Aurangabad, for offences punishable under Sections 143, 147, 148, 149, 326, 324, 504 and 506 of the Indian Penal Code, by this application, are praying for pre-arrest bail.

2. Heard the learned Counsel for applicants / accused. By drawing my attention to the FIR lodged by Kalyan s/o. Dhondiba Sangle, the learned Counsel for applicants argued that the role attributed to present applicants in the crime in question is in respect of assaulting Meena, wife of the informant, by applicant no.1 Babasaheb on her left hand and assaulting the informant by applicant no.2 Mahadeo on his nose by means of an iron rod. The learned Counsel therefore submits that as the averments in the FIR prima facie shows commission of bailable offence, Section 326 of the IPC is not attracted. Offences, as reflected from the FIR, are bailable in nature. It is further argued that applicant no.1 Babasaheb is a student prosecuting his studies. The learned Counsel therefore urged that applicants be granted pre-arrest bail.

3. The learned Addl. Public Prosecutor opposed the application.

4. Perused the case diary. The FIR lodged by Kalyan Sangle shows that applicant no.1 Babasaheb Sangle and his associate Navnath Sangle had blocked water of culvert. When the informant took exception to this fact, it is averred that applicant no.1 Babasaheb called his relatives by a telephonic call. Accordingly, applicant no.2 Mahadeo and other co-accused came to the spot. The FIR mentions that applicant no.2 Mahadeo assaulted the informant by means of iron rod whereas applicant no.1 Babasaheb assaulted Meena. It is also seen that cross FIR is lodged in respect of this incident.

5. Case diary contains statement of Jijabai w/o. Dhondiba Sangle, one of the member of the prosecuting party. Her statement reveals that she is also assaulted by accused persons. She averred that applicant no.2 Mahadeo had assaulted her by means of iron rod. Perusal of injury certificate of Jijabai Sangle shows that she suffered several injuries including fracture injury. She was admitted to Sahyadri Multi-Speciality Hospital at Aurangabad. Papers of medical treatment of that Hospital also shows that Jijabai Sangle suffered close fracture to left forearm apart from other injuries.

6. As reflected from the FIR, the incident in question took place when the informant took exception to blocking of water supply of culvert by applicant

no.1 Babasaheb. Other accused persons including applicant no.2 Mahadeo came to the spot responding call of applicant no.1 Babasaheb. Thereafter, incident of assault to members of the prosecuting party took place, as seen from the papers of investigation. Prima facie therefore it appears that the accused formed an unlawful assembly with an intention to indulge in rioting and in that process, they caused fracture injury and other injuries to Jijabai Sangle.

7. In this view of the matter, it cannot be said that the offence is bailable in nature. Each member of the unlawful assembly is vicariously liable for the act done by members of the unlawful assembly. Therefore, no case for pre-arrest bail is made out.

8. The Application is accordingly rejected.

9. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

.....