

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

918 CRIMINAL APPLICATION NO. 5194 OF 2016

**KHANDU S/O RAMBHAU RAUT
& ORS.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.J.Salunke, Advocate for Applicants.

Mr. N.B.Patil, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 23rd SEPTEMBER, 2016

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PER COURT :

1. The applicants, who are accused in Crime No. 135/2016 registered at Kaij police station, Dist. Beed for the offences punishable u/ss 307 read with 34 of the Indian Penal Code, by this application are seeking anticipatory bail.

2. Heard the learned counsel for the applicants/accused. By drawing my attention to the F.I.R. in question lodged on 13/05/2016 by the informant Vaijinath Annasaheb Raut as well as cross F.I.R. lodged by Khandu Rambhau Raut [one of the applicants], which has resulted in

registration of Crime No. 136/2016 for the offences punishable u/ss 143,147,148,149,307 of the Indian Penal Code, the learned counsel argued that in this cross F.I.R., the informant in this case namely Vaijinath Annasaheb Raut as well as both injured namely Dhanjay Raut and Lahu Kondiram Raut are implicated as accused. The learned counsel further argued that perusal of both these F.I.R. would go to show that free fight ensued because of quarrel between 2 families over the dispute of boundary of field. In that melee, persons from both parties suffered injuries and, therefore, Section 34 of the Indian Penal Code is not attracted to the case in hand. The learned counsel, therefore, argued that this Court may examine individual role of each applicant before the Court. According to the learned counsel, considering the individual role attributed to each applicant, they are entitled for anticipatory bail and their custodial interrogation is not warranted.

3. The learned A.P.P. opposed the application by pointing out the injury certificates of 3 injured including the informant and submitted that the version of the informant is duly corroborated by the statement of injured witnesses.

4. I have carefully considered the rival submissions and perused papers of investigation. This crime is registered on the basis of the report lodged by Vaijinath Raut. This report itself goes to show that the field of father of the present applicants, who are brothers, is adjacent to the field of prosecuting party. F.I.R. reflects that since long there is

dispute between the parties over the common boundary of the field.

5. In this back-drop, it is averred by the informant Vaijinath Raut that on 12/05/2016 at about 6.00 p.m., he was proceeding towards his house and when he reached at the bund of his field, applicant Khandu Raut started abusing and threatening him. Informant Vaijinath further averred that then applicant Khandu Raut contacted his brothers viz. applicants Bandu Raut and Pandu Raut telephonically and has also called his father Rambhau. They all reached at the spot. According to the informant, then Rambhau threw chilly powder on the face of the informant. Applicant Khandu Raut took out Koyta and gave blow thereof on the head of the informant and twisted his right hand. Informant Vaijinath further reported that hearing his shouts, his cousin Lahu Raut and Dhannjay Raut, who is son of Lahu, as well as Anita came running at the spot. Thereafter, as stated by the informant, accused Rambhau again threw chilly powder towards the above persons. Applicant Bandu Raut then gave blow of Katti – sharp edged weapon, on Lahu Raut causing amputation of finger of his right hand. Co-accused Rambhau assaulted Lahu Raut by means of stick. It is further alleged that applicant Pandu Raut gave blows of knife to Dhananjay Raut. Co-accused Rambhau is stated to have assaulted Anita by means of kicks and fists blows. Informant Vaijinath further stated that when other residents of the village rushed on the spot, accused persons flee from the spot.

6. Cross F.I.R. lodged by the applicant Khandu Raut on 13/05/2016 shows that on 12/05/2016 at about 6.30 a.m. present applicants and other members of the accused party were assaulted by the informant, injured witnesses as well as others.

7. The question, *prima facie*, is whether it can be inferred that applicants were having common intention. If a criminal act done by several persons in furtherance of common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone. At the same time, if a criminal act is a fresh and independent act springing wholly from the mind of the doer, then in that case, others are not liable for such act. In the case in hand, the averments in the F.I.R. itself goes to show that the criminal act attributed to each of the applicant is not a fresh and independent act on the part of each applicant springing out from his own mind. On the contrary, the averments in the F.I.R. *prima facie* shows that all the applicants were acting in league. They were assaulting members of the prosecuting party jointly. Previous dispute over the issue of boundary appears to be the reason and, therefore, it can not be said that the alleged act was not done in concert by meeting of mind.

8. On this back-drop, injury certificates of the victim of the crime will assume importance. Informant Vaijinath Raut had suffered 4 C.L.Ws. over his head apart from abrasion on his left hand wrist. Injured Dhananjay Raut had suffered C.L.W. on his right hand wrist apart from abrasion over

forehead. Injured Lahu Raut has suffered amputation on his right index finger apart from 2 abrasions over his head. All injured were referred to higher centre for expert management, as seen from the injury certificates.

9. Considering the weapons allegedly used and seat of injury as well as force by which the injuries were caused, *prima facie*, case for the offence punishable u/s 307 read with 34 of the Indian Penal Code is made out. The Investigating Officer will have to effect recoveries. For that purpose, custodial interrogation of the present applicants is even otherwise required.

10. In this view of the matter, no case for anticipatory bail is made out. Hence, the following order.

(i) The Criminal Application stands rejected and disposed of.

[A.M.BADAR, J.]