

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

Criminal Application No. 5738 of 2016

District : Nanded

1. Suresh s/o. Ganesh Karhale,
Age 25 years,
Occupation Agriculture,
R/o. Kamthala,
Taluka Kinwat,
District Nanded.
2. Govind s/o. Dhuppa Jadhav,
Age 38 years,
Occupation Agriculture,
R/o. Kamthala,
Taluka Kinwat,
District Nanded.
3. Narayan s/o. Prasadrao Karhale,
Age 60 years,
Occupation Agriculture,
R/o. Kamthala,
Taluka Kinwat,
District Nanded.
4. Satyam s/o. Ramesh Bedre,
Age 22 years,
Occupation Agriculture,
R/o. Kamthala,
Taluka Kinwat,
District Nanded.

.. Applicants.

versus

1. The State of Maharashtra,
Through Police Station,
Kinwat, Taluka Kinwat,
District Nanded.
2. The District Superintendent
of Police,
District Nanded.

.. Respondents.

.....

Mrs. S.G. Chincholkar, Advocate, for applicants.

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

.....

CORAM : A.M. BADAR, J.

DATE : 26TH OCTOBER 2016

ORAL ORDER:

The learned Counsel appearing for applicants / accused submits that, on instructions, she is withdrawing the application so far as applicant nos.2, 3 and 4, by names Govind s/o. Dhuppa Jadhav, Narayan s/o. Prasadrao Karhale and Satyam s/o. Ramesh Bedre, respectively. Hence, the application qua applicant nos.2, 3 and 4 is disposed of as withdrawn.

2. Applicant no.1 Suresh Karhale by this application under Section 438 of the Code of Criminal Procedure, is seeking pre-arrest bail in Crime No. 155/2016 registered with Police Station, Kinwat, District Nanded, for offences punishable under Sections 307, 354, 147, 148, 149, 323, 427 and 506 of the Indian Penal Code.

3. Heard the learned Counsel appearing for the applicant / accused. She pointed out the FIR and

argued that no role is attributed to the applicant in the crime in question. The learned Counsel further argued that the dispute between the prosecuting party and accused persons is over land bearing Survey No. 118. The Civil Court has already passed injunction order against informant Muktabai w/o. Bhagwan Rathod. She has criminal antecedents as on earlier occasion, she had snatched a bag from Bailiff of the Court and accordingly the Bailiff had lodged FIR against her. The incident in question is false and conduct of the informant is relevant.

4. The learned Addl. Public Prosecutor opposed the application by contending that accused persons including the applicant had formed an unlawful assembly and assaulted informant Muktabai Rathod and persons of the prosecuting party.

5. I have considered rival submissions and perused papers of investigation.

6. Injury certificate of Muktabai Rathod shows that she has suffered in all six injuries on various parts of her body. Muktabai Rathod has suffered incised wound on scalp which is reported to be dangerous to her life by the attending Medical Officer.

7. FIR lodged by Muktabai Rathod shows that

when she was sitting in the field along with daughter-in-law Vandana and grandson Sandip Aade, accused persons including the present applicant came there and questioned her presence in the field by stating that the field belongs to them. As per the FIR, accused persons were armed with axes, *Katties* and sticks. They then assaulted her by means of those weapons.

8. So far as applicant Suresh Karhale is concerned, informant Muktabai Rathod has stated that he was also one of the member of that unlawful assembly. It is settled that once membership of an unlawful assembly is established, it is not incumbent to establish whether any specific overt act has been done by an accused. Mere membership of unlawful assembly is sufficient and every member of unlawful assembly is vicariously liable for acts done by others in prosecution of common object of that unlawful assembly. However, an object is to be entertained in human mind. It being merely a mental attitude, no direct evidence can be available. Common object is to be gathered from acts which person commits and results therefrom. Such object can reasonably be collected from nature of the assembly, arms it carries, behaviour of persons comprising that unlawful assembly prior to, at the time of and after the incident. Viewed from this angle, it appears that applicant Suresh Karhale was

not sharing the common object of the unlawful assembly. He was merely present on the spot, may be because the informant was in the field though order of injunction was operating against her. Except presence on the spot, nothing is attributed against the present applicant which prima facie indicates that he was not sharing common object of that unlawful assembly. In this view of the matter, custodial interrogation of applicant no.1 Suresh Karhale is not warranted.

9. Hence, I pass the following order :-

(a) The Application is partly allowed.

(b) As aforesaid, application to the extent of applicant nos.2, 3 and 4, by names Govind s/o. Dhuppa Jadhav, Narayan s/o. Prasadrao Karhale and Satyam s/o. Ramesh Bedre, respectively, stands disposed of as withdrawn.

(c) In the event of arrest of applicant no.1 Suresh s/o. Ganesh Karhale, in the above crime, he be released on bail on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

(d) As conditions of this order, applicant no.1 Suresh s/o. Ganesh Karhale shall abide by the

following directives :-

(i) Applicant no.1 Suresh Karhale shall attend the concerned Police Station as and when reasonably called by the investigator for the purpose of investigation of the crime in question and he shall cooperate the investigator in investigation of the crime in question.

(ii) Applicant no.1 Suresh Karhale shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(iii) Applicant no.1 Suresh Karhale shall not tamper with the prosecution evidence in any manner.

(e) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

.....