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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1076 OF 2016

Dnyanoba Sadashiv Pawar and ors	 Applicants
V/s.	
The State of Maharashtra	 Respondent

Mr. M.S. Mohite, a/w Mr. Vaibhav Ugle, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.
Mr. V.G. Pawar, PSI- Bhore Police Station.

CORAM : A. M. BADAR, J.

DATE : 20th JULY, 2016.

P.C. :

1. The applicants/accused in C.R.No.59 of 2016, registered with Bhore Police Station, District: Pune, for offence punishable under Sections 302, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, by this application are seeking pre-arrest bail.
2. Heard the learned counsel for applicants as well as learned APP.
3. The learned APP opposed the application by contending that by forming unlawful assembly with common object of rioting, applicants

and co-accused committed murder of Yunus Abdul Kadar Pinjary. According to learned APP Hyder Yunus Pinjary, Siraj, Reshma Yunus Pinjary are the eye witnesses to the incident in question.

4. Perused the F.I.R. as well as papers of investigation. It is seen that Yunus Abdul Kadar Pinjary(since deceased) was tenant of one Ganesh Gogate and land came to be purchased by Ganesh Pawar who is son of the present applicant. Ganesh Pawar had constructed building on that land which is named as Prithwiraj Complex. It is the case of prosecution that on 10.10.2012, there was agreement with Yunus by which Ganesh Pawar had agreed to make arrangement of residence of the family of Yunus Pinjary (since deceased) and also agreed to sell out one flat and two shop from the shopping complex in the building which was to be constructed on the land on which Yunus was tenant. According to prosecution case Yunus gave two cheques amounting to Rs.54,000/- and 10,000/- to Ganesh Pawar. Those cheques bounced resulting in filing Regular Criminal Complaints bearing No.27 of 2013 and 28 of 2013. Ultimately the learned Judicial Magistrate First Class, Bhore dismissed both these complaints on 25.5.2016. On the eve of dismissal of both these criminal complaints Yunus Pinjary (since deceased) and his family members decided to celebrate the event and crackers were brought. Yunus and his family members then went to Prithwiraj Complex where

present applicants and their family members used to reside. Yunus Pinjary and his family members including Hyder, Reshma and Siraj bursted crackers in the premises of that building to celebrate the event.

5. In such situation co-accused Nilesh and present applicant Vimal came out of their house. According to prosecution case, then Nilesh assaulted Yunus by means of iron rod. Nilesh also gave blow of iron rod to Hyder. Ganesh is stated to have assaulted Hyder and Siraj by means of weapon stick.

6. So far as present applicants are concerned, prosecution witness Hyder states that applicant -Dnyanoba was giving abuses and applicant Vimal was assaulting Reshma and Zoya, by hands. Siraj, Reshma and Zoya are stating that applicants had assaulted by means of hands.

7. It needs to be kept in mind that prosecuting party including deceased Yunus had been to the house of present applicants for teasing them had started bursting crackers, requiring applicants and their family members to come out of the house. As such it cannot be said that both applicants were members of unlawful assembly harbouring common object to eliminate Yunus. The role attributed to them at the most is by either abuses or assault by means of hands. Ultimately because of act of co-accused Yunus succumbed to injuries.

8. Considering the nature of evidence against present applicants, their custodial interrogation is not warranted and therefore, following order.

Order

- I) Application is allowed.
- II) In the event of arrest of applicants, in above crime, they be released on bail on their executing P.R. Bonds in the sum of Rs.5,000/- by each of them and on their furnishing sureties in the like amount, by each of them.
- III) Applicants 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.
- IV) Applicant shall attend the concerned police station on 31.07.2016 in between 11.00 a.m. to 1.00 p.m., and shall co-operate the Investigating officer.
- V) Applicant shall not tamper with the prosecution evidence in any manner.

[A. M. BADAR, J.]