

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1133 OF 2016

1 Mandar Ajit Jadhav.

2 Sangram Ashok Patil.

... Applicants.

Versus

The State of Maharashtra & anr.

... Respondents.

Mr. Anand S. Patil, advocate for Applicants.

Mr. R.M. Pethe, APP for State.

Mr. N.R. Panhalkar, Dy. S.P. Sangli(CID).

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 30, 2016

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers. As per directions of the Court, the learned Counsel for the applicant had served upon the complainant by registered post A/d and the complainant Uday Pawar has not accepted the same.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 11 of 2011 registered at Islampur Police Station initially for offence punishable under Section 147, 148, 149, 324 read with section 34 of the Indian Penal Code.

3 That the complainant Ramchandra Pawar is the father of one Uday Pawar, who was being prosecuted in Sessions Case No. 46 of 2007 for offence punishable under section 302 read with Section 120B, 147, 148, 149, 422 of the Indian Penal Code for having caused homicidal death of Mahesh Bhimrao Jadhav and Umesh Bhimrao Jadhav. The present applicant No. 1 happens to be the original complainant in Sessions Case No. 46/2007.

4 It is the case of the prosecution that Ramchandra Pawar ,who is the complainant in the present case has filed Writ Petition No. 3598 of 2013 contending therein that he had lodged a report against the present applicant and since relative of the applicant was a police

personnel, no cognizance was being taken and hence, the matter was transferred for investigation to the State C.I.D.

5 The learned Counsel for the applicants submits that since the present applicants were prime witnesses in Sessions Case No. 46/2007, they were given police protection. There the charge was framed against Uday Pawar and others. The trial had commenced and in the year 2011 substantive evidence of the witnesses was to be recorded. It is the allegation of the complainant in the present case that since 2011 when his son Uday Pawar was enlarged on bail he was assaulted by the present applicants and hence, the applicants had committed an offence punishable under section 324 of the Indian Penal Code.

6 Perused the papers of investigation. It is true that police constable Vilas Mane was deputed to give police protection to witnesses in Sessions Case No. 46 of 2007. His statement was recorded. He has disclosed to the police that on 11/1/2011 at about

8.30 p.m. he was in the house of the present applicant No. 1. The applicant No. 2 was also present in the house and at about 9.45 p.m., the applicant No. 1 had received a phone call that accused Uday Pawar has been assaulted at Shiral Naka. The applicant No. 1 had immediately informed the constable Mane about the same. Police Constable Mane had informed the applicants that he would go and enquire into it and lodged report at the police station and that till he returns, the applicants should not leave the house. The police constable had verified the situation and had gone to report to the police station. However, the police had informed him that they had already received the information. In view of the statement of the police constable Vikas Mane, statement of the victim and the complainant implicating the present applicants cannot be taken into consideration. Moreover, the incident is of the year 2011. The applicants were the witnesses in the said Sessions Case, in which the accused Uday Pawar and others have been convicted for the offence punishable under section 302 of the Indian Penal Code and have been sentenced to rigorous life imprisonment.

7 Taking into consideration the nature of allegations, papers of investigation and the submissions advanced across the bar, it cannot be said that the custodial interrogation is imperative after 5 and half years of the alleged incident. Hence, the applicants deserve to be granted pre-arrest bail.

8 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

9 Hence following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 11/2011, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or two sureties in the like amount.

(iii) he applicants shall report to the concerned police station as and when called and cooperate with the Investigating agency to the best of their capacity.

(iv) The applicants shall not tamper with the evidence.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)