

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1423 OF 2016

1) Jalindar Haribhau JadhavApplicants
2) Vishal @ Vishesh Kantilal Jadhav

V/s.

The State of MaharashtraRespondent

Mr. Aniket Nikam i/b Mr. Aashish Satpute Advocate for Applicant.

Mr. S. H. Yadav APP for the State.

Mr. Nilesh G. Badakh, A.P.I. Karmala Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 25, 2016.

PC :

1) Heard. This is an application under section 438 of the Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 165 of 2016 registered at Karmala Police Station for offence punishable under section 307, 504, 143, 147, 148, 149 of the Indian Penal Code.

2) It is the case of the prosecution that on 29/04/2016, Pandurang Dhavale lodged the report at the police station alleging therein that his son Vijay had

ism

come along with his family to the village for the purpose of fair. On 28/04/2016, there was a procession and in the course of dancing, inadvertently Rajendra Jadhav had dashed Vijay Dhavale and hence, there was a trifling quarrel between them. On the same day at about 4.15 p.m., when the complainant was proceeding towards the temple, the present Applicants and other accused along with some unknown persons had mounted assault upon him and his family members. That Vijay had also sustained injuries. It is specifically stated in the F.I.R. that Applicant no. 1 had assaulted Vijay with a stone and others had assaulted Sanjay. It appears from the records that Sanjay had sustained simple injuries. That Vijay had sustained grievous injury on his left parietal region which was contused lacerated wound admeasuring 10 X 4 X 2 cm. The injury was described as grievous injury. The complainant had sustained simple injury. Rajendra had sustained grievous injury.

3) The learned counsel for the Applicant submits that Applicant no. 1 is 77 years old and therefore, is entitled to grant of pre-arrest bail. The proviso to section 437 of the Code of Criminal Procedure, 1973 is not attracted, as far as application under section 438 of the Code of Criminal Procedure, 1973 is

concerned, however, the same relief may be available to Applicant no. 1 under section 437 of the Code of Criminal Procedure, 1973.

4) Applicant no. 1 shall appear before the court of concerned Magistrate on 01/09/2016. The learned Magistrate shall consider the application on the same day. Application shall be considered on its own merits, more particularly with aid of proviso to section 437 of the Code of Criminal Procedure, 1973. As far as the allegations against Applicant no. 2 are concerned, the injuries sustained by Sanjay are simple in nature and hence, Applicant no. 2 is entitled to grant of pre-arrest bail. However, it is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is partly allowed.
- (ii) Applicant no. 2, in the event of arrest, be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- with one or two sureties in the like amount.
- (iii) Applicant no. 1 shall appear before the court of concerned Magistrate on 01/09/2016. Applicant no. 1 is protected till 5.00 p.m. of 01/09/2016.

- (iv) Applicant no. 2 shall report to the concerned police station as and when called.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)