

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1440 OF 2016

Sanjay Vasant Salunkhe & ors. ... Applicants.
Versus
The State of Maharashtra. ... Respondents.

Mr. Umesh Mankapure, advocate for Applicants.

Mr. S.S. Pednekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 19, 2016**

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for the State. Perused the papers of investigation.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicants are apprehending their arrest in Crime No. 245 of 2016 registered at Vita Police Station for offence punishable under Section 307, 323, 143, 144, 147, 148, 149 of the Indian Penal Code and Section 3(i)(10) and 7(i)(d) of the Prevention of Scheduled Cast and Scheduled Tribe Act, 1989. It appears from

the papers of investigation that the co-accused of the present applicants had lodged a report against one Kapil Londhe, which was registered as Crime No. 243 of 2016.

3 The papers of investigation further reveals that on the date of the incident i.e. on 26/6/2016 Jaihind @ Guru Salunkhe alongwith Ramesh Salunkhe had been to the Saloon of Balaji Mulik. That Jay called Kapil to the saloon. Kapil had obliged and apprehending danger he came alongwith his colleagues. There was altercation between both the rival groups. The incident is admitted by both the parties.

4 The papers of investigation indicate that the Investigating Officer has not recorded the statement of Balaji Mulik, who happens to be the eye witness and in whose saloon the incident has occurred. Although the incident is of 26/6/2016, reference to Balaji Mulik is made only in the scene of offence panchanama. The investigating officer has no explanation for the negligence in not recording the statement of eye witness.

5 The learned Counsel for the applicant submits that the accused
in Crime No. 243 of 2016 as well as the principal accused in the
present case have been enlarged on bail under section 439 of the
Code of Criminal Procedure, 1973.

6 It is an admitted position that there are cross-complaints and
the incident has occurred at the instance of Jaihind @ Guru.
However, taking into consideration the nature of injury sustained by
the rival group, the applicants herein do not deserve protection under
Section 438 of the Code of Criminal Procedure, 1973. However, they
may be entitled to the relief under Section 439 of the Code of
Criminal Procedure, 1973.

7 It is in these circumstances, the learned Counsel for the
applicant upon instructions submits that the applicant would appear
before the Special Court on 31st August, 2016. The learned Special
Judge shall consider their application on its own merits under Section
437 of the Code of Criminal Procedure, 1973. In fact, there is no

question of recovery of weapon at the instance of the present applicants. The applicants deserved to be protected till 5 p.m. of 31st August, 2016. The learned Special Judge shall consider their application under section 437 of the Code of Criminal Procedure, 1973 on its own merits, without being influenced by any of the observations made by this Court or by the Sessions Court, while rejecting the application under Section 438 of the Code of Criminal Procedure, 1973 as the observations made hereinabove are restricted to the application under section 438 of the Code of Criminal Procedure, 1973.

8 The application stands rejected and disposed of accordingly.

9 This order be brought to the notice of the Superintendent of Police, Sangli.

(SMT. SADHANA S. JADHAV,J)