

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1552 OF 2016**

Mr.Dadaji Supdu Hiray ... Applicant
Versus
State of Maharashtra ... Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1485 OF 2016

Mrs. Jijabai Dadaji Hiray and anr. ... Applicants
Versus
State of Maharashtra ... Respondent

WITH

CRIMINAL APPLICATION NO. 791 OF 2016

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1485 OF 2016

Shri Sagar Pralhad Hiray ... Applicant/Intervener
(Org. Complainant)

In the matter between
Jijabai Dadaji Hiray and anr. ... Applicants
Versus
The State of Maharashtra ... Respondent

Mr.R.R.Dube-Patil i/b Jay and Company, for the Applicants.

Mr. Prashant D. Patil, for the Intervener.

Ms.Veera Shinde, APP for the State.

Mr.S.D.Pangal, ASI Malegaon Taluka Police Station, Nashik
(Gramin).

CORAM : SMT.SADHANA S. JADHAV, J.
DATE : SEPTEMBER 29, 2016.

PC. :

1. Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.
2. These are applications under section 438 of Cr.P.C.. The applicants herein are apprehending their arrest in crime No.154 of 2016 registered at Malegaon Police Station for the offences punishable under sections 307, 341, 323, 504, 506 of the Indian Penal Code. The applicant in criminal application No. 1485 of 2016 is the wife of the applicant in criminal application No. 1552 of 2016.
3. It is the case of the prosecution that on 2nd July, 2016 the complainant Sagar Pralhad Hiray, who happens to be the real nephew of the present applicant Dadaji lodged the report at the police station alleging therein that on 1st July, 2016 at about 9.00 a.m. he was returning from Nimgaon, on the way he was confronted with Dadaji Hiray, Jijabai Hiray, Sandeep and Pruthviraj, who were on two motor cycles. The complainant was intercepted. It is alleged that the present applicants alongwith the arrested accused started abusing the complainant. Dadaji had alighted from the motor cycle and had threatened the complainant in respect of the report lodged by him at the police station earlier. Sandeep and Pruthviraj, who happened to be the sons of the present applicant had caught hold of him and then Dadaji had stabbed him with a knife and was assisted by his wife and sons. He had telephonically informed his father about the same. On 1st July, 2016 he was taken to the hospital of Dr. Vikram Vaidya, who had issued

a certificate stating therein that the complainant was examined on 1st July, 2016 at 11.00 a.m. with alleged history of assault. The certificate is of Vaidya hospital. The injury is as follows:

“Stab injury, 3 cm. wide with penetration deep on right Hypochondrium with sharp, pointed object.”

The complainant was then taken to General Hospital Dhule. The complainant was then taken to Civil Hospital at Malegaon, where he was examined on 2nd July, 2016 at 10.30 p.m. The nature of injury is as follows :

“CLW over right iliac fossa. Two stiches seen.”

The injury was described as simple injury with hard and blunt object.

The complainant was then taken to General Hospital at Dhule on 11th July, 2016. He had undergone surgery on abdomen sutured injury. The impression is as follows :

“No obvious solid organ injury. No hypenatorium or large hamatoma.”

After 12 days the nature of the injury was simple injury.

4. Learned Counsel for the applicants submit that there is a discrepancy in all the three certificates. Learned counsel for the applicants submit that it is stated in the application itself that the present complainant was working prior in hospital of Dr. Vaidya and that the certificate is manipulated. Learned APP fairly submits upon instructions that the Investigating Officer has not yet recorded the statement of Dr. Vikram Vaidya.
5. The Learned Counsel for the applicants submit that initially the applicant Dadaji was working in PWD departement. That his services were suspended due to the 'Zero budget' and therefore,

he has started cultivating the ancestral agricultural land. It is also submitted that there is a dispute between the complainant and applicants over the access way to the land of the applicants. It is also submitted that the dispute is pending before the Revenue Authorities. The Learned Counsel submits that the present applicant and their daughter in law have filed an application before the Tahasildar on 18th June, 2016 in respect of the dispute over the access land. It is submitted that before the Revenue Authorities that Shivaji Hiray is obstructing them from their access way to the agricultural land. It is also submitted that the owner of plot No. 670 i.e. Bebibai Pralhad Hiray, who happens to be the mother of the present applicant has also obstructed the way and has threatened them of dire consequences. It is also submitted that the applicant has previously filed suit on 16th June, 2016 and 18th June, 2016.

6. It is pertinent to note that the mother of the present complainant has lodged FIR against the present applicant Dadaji alleging offence punishable under section 354 of the Indian Penal code. They are the close relatives. Learned Counsel for the applicants rightly submit that the allegations levelled in the earlier complaint do not inspire confidence of the court as the allegations are that the applicant Dadaji had visited her house one day and all of a sudden had attempted to outrage her modesty. She happens to be the sister-in-law of applicant Dadaji i.e. the wife of the real brother. The learned Counsel submits that the age of Dadaji is about 55 years and it can not be believed that after being neighbour and being close relatives of each other, the applicant would indulge into such an act. It is submitted that the applicants are taken into custody and remained in custody for

more than 24 hours.

7. It prima facie appears that there is a dispute between the complainant and the applicant's family over the access, encroachment and boundary of their ancestral agricultural land and it has taken ugly turn by initiating criminal cases against each other. It is submitted that the son of the applicant namely Sandeep is in custody since 2nd July, 2016. Be that as it may, *prima facie* taking into consideration the nature of the allegations, the background of the case, the discrepancy in the injury certificate of the complainant and the submissions advanced across the bar the applicants deserve grant of pre-arrest bail.
8. It is made clear that the observations are prima facie in nature and shall not be considered for the purpose of quashing of FIR and discharge application or at the time of trial.
9. The Investigating Officer shall record the statement of Dr. Vikram Vaidya. The Investigating Officer shall independently inquire as to whether the complainant was at any point of time working in whatever capacity with Dr. Vikram Vaidya.

ORDER

- i) The Applications are allowed.
- ii) In the event of their arrest, the applicants be enlarged on bail on furnishing PR bond in a sum of Rs.15,000/- each with one or more solvent sureties in the like amount.
- iii) The applicants shall co-operate the Investigating Officer and report

to the Investigating Officer as and when called after issuing notice under section 160 of Cr.PC.

iv) The applications are allowed and disposed of accordingly.

v) Intervention application No. 791 of 2016 is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)