

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2002 OF 2016

Kantilal Shankar Hinge

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. P.G. Jagdale for the Applicant.

Mr. Prashant Jadhav, APP for the Respondent -State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : NOVEMBER 24, 2016.

P. C. :

1. Heard the learned counsel for the Applicant and the learned APP for the Respondent-State. Perused the papers.

2. This is an application under section 438 of the Criminal Procedure Code, 1973. The Applicant is apprehending his arrest in Crime No.228 of 2016 registered at Malegaon Taluka Police Station initially for the offences punishable under Sections 324, 323, 341, 504 and 506 read with Section 34 of the Indian Penal Code. Subsequently, Section 307 of the Indian Penal Code has been added.

3. It is the case of the prosecution that on 11th October, 2016 Mohini More lodged a report at the police station alleging therein that

on 10th October, 2016 after working at the agricultural land she was proceeding home with her father-in-law on motorcycle. When they were passing through Mhasoba Temple they noticed that there was no further access to the road since the road was blocked by JCB machine belonging to Mr. Kantilal Hinge was parked. There was a verbal altercation between her father-in-law and Kantilal Hinge. Soon thereafter Pravin Hinge and Bharat Pawar started assaulting her father-in-law with fists and kick blows and thereafter Kantilal Hinge had drawn tommy from the JCB and had assaulted her father-in-law. Due to which, he had sustained grievous injuries. The injury certificate is on record.

4. The learned counsel for the Applicant submits that in the present case conduct of the complainant needs to be taken into consideration for deciding the application under section 438 of the Criminal Procedure Code. It is argued that there are no instant eye witness to the alleged incident. It is also argued that the complainant was carrying a cell phone with her. She is an educated woman and she could sign in English. Yet, after the incident she had not informed the incident immediately to anybody. It is also argued that the “tommy” the iron rod was not provided with the JCB therefore, it was not

necessary for the Applicant to draw the tommy from the JCB. It is also argued that the allegations are exaggerated. The learned counsel for the Applicant also argued that the injury certificate is suspicious. As a last length of argument the learned counsel for the Applicant submits that the son of the present Applicant is a special child and has 75% disability and therefore, the Applicant deserves to be enlarged on bail.

5. While considering the applications of co-accused, this Court has specifically observed that the overt act is attributed exclusively to the present Applicant and that he had come to a quick term with the verbal altercation. The injury sustained by the injured was not only a grievous injury but the certificate indicates that it had caused convulsions and hence, it was dangerous to life. Taken into consideration the overt act attributed to the Applicant, the injury certificate and the papers of the investigation, this Court is of the opinion that the Applicant is not entitled for the discretionary relief under section 438 of the Criminal Procedure Code.

6. The application being sans merits stands rejected.

(SMT. SADHANA S. JADHAV, J)