

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2173 OF 2016

1. Vikas Karbhari Gangurde
2. Niwas Karbhari Gangurde
3. Dyaneshwar Karbhari Gangurde
4. Amol @ Kiran Vikas Gangurde
5. Atul Niwas Gangurde
6. Nana Ganjaram @ Ganjiram Pawar
7. Meenabai Vikas Gangurde
8. Meenabai @ Minakshi Niwas Gangurde

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Vikas Shivarkar Advocate for the Applicant.
Mr. Prashant Jadhav APP for the State.
Mr. K. S. Gujar, A.S.I. Malegaon Police Station, Nashik

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 21st DECEMBER, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 267 of 2016 registered at Malegaon Taluka Police Station for offence punishable under sections 323, 326, 143, 147, 148, 149, 427, 504, 506 of the Indian Penal Code.

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2) It is the case of the prosecution that 27/11/2016, Piraji Gavali was admitted in the Civil Hospital at Malegaon. His statement was recorded and he has disclosed to the police that his paternal uncle Nana Gavali had purchased Gat No. 395 in Yerandav Shivar from Karbhari Gangurde. The land stand mutated in their name. A civil dispute is pending between Gangurde family and the family of the complainant. According to the complainant on 22/11/2016, he along with his relatives was engaged in agricultural operations and that at that time, present applicants and others had come to the land and had obstructed them from continuing with the agricultural operations. There was an altercation and thereafter, applicants and others had assaulted them with fist and kick blows and with sticks. They had also threatened the complainant and his family of dire consequences.

3) The learned counsel for the applicants submits that there are cross complaints in the present case. In fact, incident is dated 22/11/2016 and on 23/11/2016, present applicants had lodged F.I.R. in respect of the same incident on the basis of which crime no. 194 of 2016 is registered at Chandwad Police Station against the complainant and others for offence punishable under sections 324, 323, 504, 506, 143, 147, 148, 149 of the

Indian Penal Code. The learned counsel for the applicants submits that the persons from the group of the applicants were also injured. Piraji has assisted sustained one grievous injury on his stomach. The learned counsel submits that there is a delay of 4 days in lodging the F.I.R. and the said F.I.R. has been lodged only to counter blast the registration of crime no. 194 of 2016 at Chandwad Police Station.

4) The learned APP, on the basis of papers of investigation submits that in fact, on the very day of the incident, Piraji had lodged a report at the police station on the basis of which non-cognizable case was registered.

5) Perused the papers of investigation. In the said report, it was mentioned that there was an altercation which was an outcome of the civil dispute and that the present applicants had assaulted the complainant with fist and kick blows. There is no reference to a stick. It cannot be said that the act of the applicants was pre-meditated and that the incident had occurred on the spur of the moment.

6) In view of this, applicants deserve grant of pre-arrest bail. However, it is made clear that observations made herein above are restricted to an application under section 438 of the Code of Criminal Procedure, 1973 and

shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount.
- (iii) Applicants shall report to the concerned police station as and when called.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)