

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

ANTICIPATORY BAIL APPLICATION NO.1900 OF 2017

Kisan Prakash Devale & Ors. Applicants
Vs.
The State of Maharashtra Respondent

WITH

INTERVENTION APPLICATION NO. 1141 OF 2017

Ritesh Kisan Waghmare ... Intervenor

In the matter between

Kisan Prakash Devale & Ors. Applicants
Vs.
The State of Maharashtra Respondent

Mr. Ritesh Thobde a/w Mr. Sagar Tambe for the Applicants.
Mr. N.B. Patil APP for the State.

Mr. Bhushan Walimbe for Intervenor.

Coram : ***Smt. Sadhana S. Jadhav, J.***
Date : 23rd February, 2018

P.C.:

1 Heard the learned counsel for the applicants and the learned APP. This is an application under Section 438 Code of Criminal Procedure.

3 At the threshold, the learned counsel for the applicants submits that he would not be press for relief in respect of applicant no.1 and that the applicant no.1 would surrender before the Magistrate on 5th March, 2018. The applicant nos.1 and 2 are apprehending their arrest in Crime No.488 of 2017, registered at Barshi Police Station, for the offences punishable under Sections 307, 120(B) of Indian Penal Code and under Sections 3, 25 and 27 of Arms Act.

4 It is the case of the prosecution that on 23rd September 2017, Ritesh alias Anna Kisan Waghmare lodged a report at the police station alleging therein that there was a transaction between him and Balasaheb Vishnu Jagtap. Mahesh Prakash Devle was present in whose presence the amount of Rs.25.00 Lacs was given to Balasaheb. Since the vendor was not fulfilling his part, the first informant had asked Mahesh Devle to call upon Balasaheb and help him to recover the said amount. It appears that Mahesh was the middleman. According to the first informant on 14th June, 2014, he was proceeding towards his home from the agricultural land and when he had passed Waghmare-vasti he had seen the person standing in ambush and two other persons were concealing themselves behind the tree. Suddenly there was fire. One of the person was directed to fire and the unknown person had shot at the first

informant. He had fallen on the ground. The said persons were unknown to him.

5 In December 2016, one Akshay Koli resident of village Isapur, Taluka Tasgaon had approached the first informant and had submitted that Kisan Devle, Mahesh Devle, Prakash Devle and Milind Devle had given him the contract of elimination of the first informant and the contract amount is Rs.10.00 Lacs. In fact the contract was given to Lalasaheb Patil, resident of Isapur, Taluka Tasgaon to eliminate the first informant and therefore, he was constrained to go the police station to lodge a report. It appears from the record that the first informant had initially approached the police station but the police had not taken any cognizance. Thereafter the first informant had lodged a report on 11th March, 2017. There was an enquiry. The statement of Akshay Koli was recorded. The enquiry was closed. The applicant had obtained the papers of enquiry under Right to Information Act. In fact due to embargo of Section 172 Sub-clause (3) the Cr.PC., the papers ought not to be given to the accused. However, upon perusal of the statement of Akshay, it is clear that Akshay had not named the applicant no.2. Applicant no.3 expired in December 2017. Learned counsel for the applicants, upon instructions, submits that the applicant no. 2 is a neighbour person. Learned counsel for the applicant submits that in fact the incident is of the year 2014 and the first information report is lodged in 2017.

The possibility that the case is concocted against the present applicants and the possibility of previous enmity cannot be ruled out. Taking into consideration the papers of investigation, this Court is of the opinion that the applicant no. 2 deserves to be protected.

6 However, the observations made hereinabove are prima facie in nature. The learned Sessions Court shall not be influenced by the above observations at the time of hearing the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits. Hence, the following order is passed :

ORDER

1 The application is allowed.

2 The application of applicant no.1 is dismissed as withdrawn. Applicant no.1 stands protected till 5.00 pm. of 5th March, 2018.

3 In the event of arrest of the applicant no.2, he be enlarged on bail on furnishing P.R. bonds in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

4 The applicant no. 2 shall report to the concerned police station from 1st March 2018 to 5th March, 2018 everyday between 10.30 am. to 12.00 noon and co-operate with the investigating agency to the best of his ability.

5 In view of the order passed in the above application, the Intervention Application is heard, allowed and disposed of.

(*Smt. Sadhana S. Jadhav*, J)