

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1514 OF 2018

1 Surya Sunil Masal.
2 Samir Ajinath Wakase. ..Applicants.

V/s.

The State of Maharashtra. ..Respondents.

Mr. Kuldeep Patil I/b. Mr. Prashant S. Hagare, advocate for applicants.

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

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 30, 2018.

P. C. :

1 Heard the learned Counsel for the applicants and the learned APP for State.

2 This is an application under section 438 of the Code of Criminal Procedure, 1908. The applicants herein are apprehending their arrest in Crime No.248 of 2018 registered at Indapur Police station for offence punishable under section 307, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code.

3 It is the case of the prosecution that on 5/4/2018 Umesh Waghmode was admitted in the hospital with history of assault. His statement was recorded. According to him, on 5/4/2018, the applicants

Talwalkar

were in the company of Hemant Waghmode, who had raised quarrel with the complainant on the ground that he was not invited for the birthday party of Vikram Butte. Hemant Waghmode had allegedly assaulted the complainant with a sword and thereafter, his associates had mounted assault. It is alleged that the present applicants, who were in the company of Hemant Waghmode, had assaulted complainant with fists and kick blows.

4 The learned Counsel for the applicants submits that this is a case of cross complaint. The cross complaint is filed and Suresh Sunil Masal happens to be the complainant in Crime No. 253 of 2018 in respect of the same incident.

5 The learned APP submits that the first information report is lodged on 6/4/2018 and till 20/6/2018 the applicants were absconding. The investigation is completed and charge-sheet is filed against the present applicants under section 299 of the Code of Criminal Procedure, 1973. The application seeking pre-arrest bail is rejected on 20/7/2018.

6 The learned Counsel for the applicant submits that accused Hemant Waghmode who is accused No. 1 is still absconding and the rest of the accused persons have been enlarged on bail. That no specific role is attributed against the present applicants except that they had

assaulted with fists and kick blows.

7 Learned APP submits that since the applicants were absconding for almost 2 months and that the accusation against present applicants are under section 143, 147, 148 of the Indian Penal Code, the common object of the accused is to be seen and it would not be necessary to consider that no specific role is attributed.

8 Taking into consideration the fact that the investigation is completed and charge-sheet is filed, coupled with the fact that the allegations levelled against the present applicants are restricted to assault by fists and kick blows and the submissions of the learned Counsel for the applicants that the applicants have been arraigned as an accused only because they happen to be the close associates of Hemant Waghmode, the applicants deserve to be granted pre-arrest bail. It is made clear that the principal accused Hemant Waghmode shall not claim parity with the present applicants.

9 The observations hereinabove are prima facie and restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for quashing of FIR, discharge application or at the time of trial.

Talwalkar

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No. 248 of 2018 registered at Indapur Police Station, the applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 30,000/- each with one or more sureties in the like amount.
- (iii) The applicants shall report to the concerned police station on 4/8/2018 to 8/8/2018 everyday between 10.30 a.m. to 1.00 p.m. and cooperate with the investigating agency to the best of their capacity.
- (iv) The applicants shall not tamper with the evidence.
- (v) The applicants shall not reside at village Kati Khorochi, Taluka Indiapur, Dist. Pune till 30/9/2018.
- 11 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Aruna Sandeep
Talwalkar

Digitally signed by Aruna
Sandeep Talwalkar
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