

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

ANTICIPATORY BAIL APPLICATION NO.2277 OF 2018

1. Jaywantrao Namdevrao Jagtap	
2. Vaibhav Jaywantrao Jagtap	...Applicants
Versus	
The State of Maharashtra	...Respondent

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Mr. Aniket Nikam with Mr. Sachin T. Zalte for the Applicants.
Mr. N.B. Patil, APP for the Respondent -State.
Mr. V.V. Purwant I/b. Mr. Yogiraj Purwant for the Intervenor.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st NOVEMBER, 2018.

P.C.:-

This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicants, apprehending their arrest in C.R. No.777 of 2018 registered at Karmala Police Station, District-Solapur (rural) for offences punishable under Sections 120 B, 143, 145, 147, 307, 324 504 and 506 r/w. 149 of the Indian Penal Code, 1860, Section 135 of the Maharashtra Police Act and Section 3(25) of the Arms Act.

2. Heard Mr. Aniket Nikam, the learned counsel for the Applicants, Mr. N.B. Patil, the learned APP for the Respondent-State and Mr. V.V. Purwant, the learned counsel for the Intervenor. I have

perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records reveal that one Digvijay Bagal had lodged the FIR alleging that on 3.10.2018 at about 12.00 p.m. the Applicants alongwith others formed an unlawful assembly armed with weapons such as iron rods, PVC Pipes, etc. and that they assaulted the first informant-Digvijay and one Bandgar. It is alleged that the Applicant No.1-Jaywantrao Jagtap had hit the revolver on the nose of the first informant whereas all the others had assaulted him by iron rods, PVC pipes, kicks and blows.

4. The medical certificate prima facie indicates that the first informant had sustained nasal fracture and a fracture of Ulna, which are grievous in nature. The material on record prima facie indicates that the injury on the nose was inflicted by the Applicant No.1. Thus the records prima facie indicate that the Applicant No.1 was involved in causing grievous hurt to the first informant by rifle butt. The said act would prima facie constitute offence under Section 326 of the IPC, which is punishable with imprisonment for life or with imprisonment for a term which may extend to ten years and with fine. Considering

the nature of offence, I am not inclined to grant pre-arrest bail to the Applicant No.1.

5. As regards the Applicant No.2 the records do not prima facie indicate that the Applicant No.2 was responsible for the fracture of Ulna. The material on record does not indicate that the Applicant had inflicted injury on any vital part of the body or that he had committed any such overt act with an intention /knowledge of causing the death of the first informant. The allegations against the Applicant No.2 are general in nature. The nature of allegations against the Applicant No.2 do not prima facie attract Section 307 or 326 of the IPC. The question whether he can be held vicariously liable by virtue of Section 149 of the IPC is a question to be decided on merits.

6. Considering the above facts and circumstances, in my considered view, the Applicant No.2, is entitled for pre-arrest bail.

7. Hence, the following order:

(i) The application is dismissed as against the Applicant No.1.

(ii) The Applicant No.2 is granted pre arrest bail on following terms and conditions:-

- (a) In the event of arrest of the Applicant No.2 in C.R. No.777 of 2018 registered at Karmala Police Station, District-Solapur (rural) the Applicant No.2 shall be released on bail on furnishing bail bonds of Rs.25,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant No.2 shall report to the concerned police station for a period of four days from 12.11.2018 between 11.00 a.m. to 2.00 p.m. and thereafter as and when required and called by the concerned investigation officer.
- (c) The Applicant No.2 shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned investigation officer.
- (d) The Applicant No.2 shall not change his residential address without prior intimation to the concerned investigation officer.
- (e) The Applicant No.2 shall not interfere with the first informant and/or witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)