

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 793 OF 2019

Dinkar s/o Keshavrao Chavhan and another .Vs. State of Maharashtra
through PSO P.S. Yavatmal (Rural), Dist. Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. N.T. Gwalbanshi, Advocate for applicants.
Mr. M.J. Khan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 10, 2019

Heard Mr. N.T. Gwalbanshi, learned counsel for applicants and Mr. M.J. Khan, learned Additional Public Prosecutor for the non applicant-State. Also perused the detailed reply filed on behalf of the prosecution.

The applicants are apprehending their arrest in connection with Crime No.635/2019 registered with Police Station, Yavatmal (Rural), Dist. Yavatmal for an offence punishable under Sections 143,147, 148, 149, 324, 326, 504 and 506 of the Indian Penal Code.

During period of Diwali festival on 29.10.2019 on account of bursting of firecrackers the neighbours picked-up quarrel amongst themselves resulting into registration of two crimes at Police Station, Yavatmal (Rural). Crime No. 634/2019 is registered in view of the report lodged by Karan Chavan for the offence punishable under Sections 143, 147, 148, 149,

324, 326, 504, 506 of the Indian Penal Code.

Crime No. 635/2019 in which the applicants are praying for pre-arrest bail was registered on the basis of report lodged by Sahadev Pawar.

Complainant in Crime No. 634/2019 i.e. Karan is accused in Crime No. 635/2019 and he was also injured.

As per prosecution case, on account of bursting of firecrackers which was objected by Karan and present applicants, they hurled filthy abuses to Santosh, the son of Sahadev and also to him. It is the further prosecution case that thereafter, near pan shop, Karan Chavan and present applicants assaulted on Santosh by iron pipe and when it was objected by complainant Sahadev, he was also assaulted.

The first information report shows that complainant Sahadev was assaulted by more than 10 persons. In the first information report, the overt act that is attributed to the applicants is, along with co-accused Karan, in respect of assault made on Santosh. Sahadev's supplementary statement was recorded on 03.11.2019 and in the said the complainant attributed the role to the applicant about the assault by iron pipes along with 10 other accused persons. The names of present applicants are appearing in the first information report.

As per reply, injured Santosh, the son of the complainant, has received one abrasion 4 x 3 cm whereas on the person of complainant Sahadev, he

received injury on right parietal region of size 5 cm X 1 cm X 0.5 cm. The investigation papers contain the injury certificates of Sahadev and Santosh. It would reveal that they were having only one injury as stated hereinabove. In the injury certificates, the medical officer did not opine about nature of the injury as to whether it is grievous or simple. However, it was observed that after obtaining surgery opinion, opinion about nature will be given. The injury report shows that the patients were referred to surgery. The Discharge card of both the injured is also available in the investigation papers. It does not show that any surgery was performed on complainant Sahadev. It shows that he was discharged within a period of 2 days. Though, that occurred on 02.11.2019, as on today investigation papers does not contain the opinion of the Doctor regarding nature of the injuries.

Karan was arrested as it could be seen from the reply filed by the State. From the reply it is clear that iron pipe was recovered at the behest of Karan. It is reported to this Court by learned Additional Public Prosecutor that Karan is released on regular bail by the Court below.

According to the learned Additional Public Prosecutor custody of the applicants is required for recovery of iron pipe.

Prima facie, though it is stated in the prosecution case that the applicants were holding iron

pipe however as discussed hereinabove, it is clear that it is quite possible that the applicants might not have used the iron pipe looking to the fact that there only exist one injury.

The applicants are not having any criminal antecedent at their discredit. The applicants were protected by this Court by order dated 25.11.2019 on a condition that applicants shall attend police station on the dates specified in the said order. According to the learned Additional Public Prosecutor, the applicants did attend the police station and they have already joined the investigation.

The discussion as made above leads me to pass following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.635/2019 registered with Police Station, Yavatmal (Rural), Dist. Yavatmal for an offence punishable under Sections 143,147, 148, 149, 324, 326, 504 and 506 of the Indian Penal Code, applicants – (1) Dinkar S/o Keshavrao Chavhan and (2) Sanjay Dhanraj Chavhan, be released on bail on they executing P.R. Bond in the sum of Rs.10,000/- each with one solvent surety in the like amount by each of them.
- (iii) Applicants are directed to attend Police Station, Yavatmal (Rural), Dist. Yavatmal as and when they are called by the investigating officer. However, for

that the investigating officer shall give clear cut two days prior written communication to the applicants.

(iv) The observations made in this order are *prima facie* and only for deciding this application. The learned Judge of the trial Court before whom trial will be conducted should not get himself influenced by it.

(v) With this, the criminal application is allowed and disposed of.

JUDGE

srwagh