

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.781 OF 2020

- 1 Prashant Prakashlal Mandlecha,
Age 40 yrs., Occ. Business,
R/o Taklimanur, Tq. Pathardi,
Dist. Ahmednagar.
- 2 Jawaharlal @ Balu Mishrilal Mandlecha,
Age 50 yrs., Occ. Business,
R/o Taklimanur, Tq. Pathardi,
Dist. Ahmednagar.

... Applicants

... **Versus** ...

The State of Maharashtra
Through Police Station Officer,
Pathardi Police Station, Pathardi,
Dist. Ahmednagar.

... Respondent

...

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicants

Mr. V.M. Kagne, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th DECEMBER, 2020

ORDER :

1 Present application has been filed under Section 438 of the Code

of Criminal Procedure, 1973 by the persons arrayed as accused Nos.3 and 12 in Crime No.509/2020 registered with Pathardi Police Station, Dist. Ahmednagar for the offence punishable under Section 307, 326, 325, 324, 323, 427, 269, 270, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860, under Section 11 of Maharashtra Covid-19 Regulations, 2020, under Section 2, 3 and 4 of The Epidemic Deceases Act, 1897, under Section 51(b) of The Disaster Management Act, 2005 and under Section 4, 25 of Arms Act, 1959.

2 Heard learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for applicants and learned APP Mr. VM. Kagne for respondent/State.

3 It has been vehemently submitted on behalf of the applicants that the applicants are innocent and they have been falsely implicated with an intention to counter the First Information Report, which has been, registered against the informant and his men by the present applicant No.1. The applicants were severely assaulted by informant and his men, rather the informant and his men did not receive any injury. Informant is an influential political person and the police did not even bother to see the injury certificates of the informant and alleged injured persons but straightway lodged the FIR invoking serious offence under Section 307 of the Indian Penal Code. The injuries which have been received by the present applicants

and his family members would speak for itself. They were brutally assaulted and under such circumstance, when it is alleged that the present applicant No.1 had assaulted the informant by sword, it is required to be seen that he has not received a specific injury to his head, that too, by sword. The applicant No.2 is stated to have used pistol and it has also not resulted any kind of injury to the head of the informant. Therefore, the physical custody of the present applicants is not required for the purpose of investigation.

4 Per contra, the learned APP strongly opposed the application contending that specific role is attributed to the present applicants. The weapons used for the commission of crime by them are definitely required to be seized.

5 It is to be noted that one Vishnu Babasaheb Dhakne, while he was undergoing treatment at Apex Hospital, Ahmednagar, lodged report on 29.07.2020 regarding the incident dated on 28.07.2020 at 7.30 p.m.. According to him, he and his nephew Sandesh and one Gaurav were proceeding in his four wheeler. When they were in Jai Malhar Chowk of Taklimanur village one Sachin Mandlecha had intentionally given dash to the four wheeler of the informant. All of them got down and then he says that about 16 accused persons came there and started saying that the informant is always opposing them regarding purchase of land by them and they are

required to see that he is eliminated. After giving him abuses they were assaulting him by kicks and fist blows. When the informant started pacifying them, all of them got annoyed and intensified their assault. Applicant No.1 had tried to assault him by sword by giving blow on his head and thereby trying to commit his murder. Other accused persons had assaulted him by iron rod and wooden log. Gaurav Karande and the nephew of the informant were also assaulted severely. Applicant No.2 took out revolver and gave a blow of the same on the head of the informant and given threat that if they indulge in his activity then the informant would be shot dead.

6 It appears that the injury certificate of the informant showed fracture injury to the left index finger and other grievous injuries are not noted on his vital part of the body. Even if for the sake of argument the medical certificate may not be, at present, supporting the contentions in the FIR; yet, it is to be noted that when the revolver is shown and threat to kill is given, then whether it amounts to attempt to murder, as contemplated under Section 307 of the Indian Penal Code, would be required to be decided at the time of trial. Further, as regards the FIR, that has been, lodged by the present applicant No.1 against the informant and others is concerned, it appears to be subsequent i.e. Crime No.510/2020 registered at 23.37 hours. Therefore, it cannot be stated that the FIR against the present applicants was a counter

blow. Taking into consideration the fact that certain weapons have been used in the commission of the crime and mainly the deadly weapon by the present applicants they do not deserve the discretionary relief of anticipatory bail. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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