

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1167 OF 2020

- 1) Ram Amrutlal Bhurewal,
Age 33 years, Occupation Agri.,
- 2) Bharat Amrutlal Bhurewal,
Age 30 years, Occupation Agri.,
- 3) Nathu Laxman Bhurewal,
Age 82 years, occupation Nil,
- 4) Gopal Ramchandra Ambewale,
Age 70 years, occupation Nil,

All R/o Talreja Nagar, Near
Post Office, Kalikurti At Post
Jalna Tq. Dist. Jalna.

...Applicants

VERSUS

The State of Maharashtra.

...Respondent

.....
Advocate for Applicants : Mr. A. A. Nimbalkar.

APP for Respondent-State : Mr. A. M. Phule.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 16-12-2020.

ORDER :

1. Present application has been filed by the original accused persons for getting anticipatory bail under Section 438 of CrPC, as they

are apprehending their arrest in connection with Crime No.727 of 2020, registered with Police Station Sadar Bazar, Jalna Dist. Jalna, dated 23-11-2020, for the offences punishable under Section 341, 384, 387, 327, 143 and 427 of IPC.

2. Heard learned Advocate Mr. A. A. Nimbalkar for applicant and learned APP Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that civil litigation is going on since many years between the informant and the predecessor of the applicants. The property which has been mentioned in the FIR was the subject matter in suits filed by the predecessor of the informant and the predecessor of the applicants was defendant in those cases bearing RCS No.484 of 1997 and RCS No.61 of 1998, which were before 3rd Jt. Civil Judge (J.D.), Jalna Dist. Jalna. Thereafter, it can be seen that both the decrees were challenged by the predecessor of the present applicants in RCA No.125 of 2002 and RCA No.126 of 2002. Learned 4th Adhoc Additional District Judge, Jalna allowed both the appeals on 24-01-2006 and suits filed by the respondents came to be dismissed. Thus, it can be seen that the possession of the present applicants over the suit property was upheld by the Appellate court.

Thereafter, the said decree was challenged by one Vishnudatta Bansilal Joshi i.e. original plaintiff, before this Court by filing Second Appeal No.165 of 2006. This Court by Judgment dated 16-08-2013 dismissed the second appeal, and though that order was stayed for a certain weeks by this Court, no adverse order has been passed by the Hon'ble Apex Court. With this background when the present applicants are the possessors of the property numbered as 4010, the informant has come with a case that his possession has been tried to be disturbed and there was an attempt to take forcible possession by the present applicants. The civil dispute has been tried to be given a criminal angle. In fact, after the notice was issued by the Investigating Officer to the applicant No.1, he has given written reply on 14-11-2020. It was pointed out that the applicants are in possession of the property. Police have unnecessarily taken cognizance of the allegations by the informant. Even the informant is pressurizing the applicants through police station for compromise. No such incident as narrated in the FIR had ever taken place, and therefore, the present applicants deserve to be enlarged on anticipatory bail.

4. It has also been submitted on behalf of the applicants that

there is huge delay in lodging the FIR. The incident is stated to have taken place on 12-11-2020 and 13-11-2020 respectively, yet the FIR has been lodged on 23-11-2020. The physical custody of the applicants is not at all required as the evidence is based on the documents which have already been seized or taken in custody by the police. Learned Advocate for the applicants therefore prayed for anticipatory bail.

5. Learned APP strongly opposed the application and submitted that though there appears to be some civil dispute angle to the facts of the case, yet those allegations in the FIR will have to be investigated independently. The incident dated 12-11-2020 at about 08.45 p.m. has been recorded in CCTV. If the applicants were in possession of the suit property then they would not have acted which can be said to be detrimental to their own property. The manner in which the offense is committed is required to be considered. Learned APP therefore prayed for rejection of the application.

6. At the outset, it is to be noted that there appears to be a civil angle to the dispute. That dispute goes up to the fact as to in whose possession that premises is. But according to the informant he

possesses the said shop. The present applicants had gone to the informant at about 08.45 p.m. on 12-11-2020 and even on that day the applicant No.1 by giving threat holding knife went away and there is CCTV footage available in respect of that incident. Further, the informant says that when he went to hotel at about 11.00 a.m. on 13-11-2020, at that time the present applicants with original accused No.1 Haresh Bhurewal went to the hotel run by the applicant, they all had caused damage to the furniture in the hotel on the next day. After giving threat to kill, they snatched amount of Rs.5,000/- from the informant and asked the informant that he will have to give them amount of Rs.10 Lakh if the informant wants to reopen the shop. He has stated that many articles from the hotel have been taken away by the present applicants. Thus, it can be seen that the recovery is contemplated. Further, though preliminary inquiry appears to have been made before registering the FIR and in that process the applicant No.1 has given his say, yet it appears that from the evidence that has progressed, there is material available with the Investigating officer to connect the present applicants with the crime, and therefore, he has registered the FIR. Interesting point to be noted is that in his say the present applicant has stated about the incident dated 13-11-2020, and he says that, the

informant, his brothers and 12 to 13 hooligans went the hotel of Haresh Bhurewal and by giving threat to kill, he was assaulted. The gold chain from his neck was forcibly taken away along with cash of Rs.4,500/-. Allegations are serious in nature. It is alleged that not only after giving abuses the informant's amount was taken away, yet they had forced informant to close down the hotel. Definitely a thorough inquiry is necessary. The orders passed by the Civil Court might be in favour of the applicants at this *prima facie* stage, yet when it comes to offence, unless it is shown by any stretch of imagination that the crime in which they are apprehending their arrest is concocted or afterthought, filed with mala fide intention, the extra-ordinary powers of this Court to grant relief / personal liberty need not be exercised. There is no merit in the present application, it deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-