

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.285 OF 2021

**SAKHARAM MARIBA NAGARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mr. D.U. Kamble and Mr. G.D. Angad, Advocates for applicants

Mr. N.T. Bhagat, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 08th APRIL, 2021

PRONOUNCED ON : 27th APRIL, 2021.

ORDER :

1 Present applicants have been arrested on 27.01.2021 in connection with Crime No.280/2020 dated 29.12.2020 by Aundha Nagnath Police Station, Dist. Hingoli, for the offence punishable under Section 326, 447, 504 read with Section 34 of the Indian Penal Code, 1860. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocates Mr. D.U. Kamble and G.D. Angad for applicants and learned APP Mr. N.T. Bhagat for respondent Nos.1 and 2. In

order to cut short, it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report lodged by one Narayan Tukaram Nagare would show that on the day of FIR he was admitted in Intensive Care Unit with Government Hospital, Vishnupuri, Nanded. He states that he is having wife and two sons. He has agricultural land bearing Gat No.105 and he is holding 5 acres of land. The present applicants are his cousin brothers and nephew. According to him, the applicants had attempted to dug a well in the field of the informant in his absence. That well was taken 10-15 feet deep and through Panchayat Samiti he had stopped the applicants from digging the well further. That incident had taken place about 6-7 months prior to the FIR. However, on 28.12.2020 compression machine was brought by the applicants and they started the digging work. When informant got the knowledge about the same, he reached the field around 2.00 p.m. He tried to stop the applicants from digging the well further, however, applicant No.1 assaulted him by stick on his right hand, causing fracture, applicant No.2 also assaulted him with stick and fractured informant's left leg and applicant No.3 caused fracture to the informant to his right leg by stick. When he was assaulted, he fell down, still applicant had assaulted him with stick on his chest, back and head. Thereafter, all of them went. Grandson of the informant along with his friends came after some

time and when they saw the informant in injured condition, he was taken to hospital.

4 Perusal of the said FIR would show that nobody else had seen the incident, and therefore, the statements of the witnesses are also on the same line. Those persons are saying that when they saw informant in injured condition, they made inquiry with him and came to know about the incident. Therefore, only witness on the point of incident is the informant himself. The another piece of evidence is the Medico Legal Certificate, which shows that the fractures have been caused to the informant. Now, the police have discovered three sticks from all the three applicants under Section 27 of the Indian Evidence Act. Therefore, with this kind of evidence the applicants need not be asked to remain in jail, as it would take long time to stand their trial. Strict conditions are required to be imposed, taking into consideration the fact that the informant and the applicants are from the same village. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Sakharam Mariba Nagare, 2) Bhikaji Mariba Nagare and 3) Balu @ Tryambak Bhikaji Nagare, who have been arrested in connection with Crime No.280/2020 dated 29.12.2020 by Aundha Nagnath

Police Station, Dist. Hingoli, for the offence punishable under Section 326, 447, 504 read with Section 34 of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each and two sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 They shall not enter the jurisdiction of village Asola Tarf Lakh till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)