

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

ANTICIPATORY BAIL APPLICATION NO. 750 OF 2021

1. Chotukha Hanafikha Mewati,
Age : 48 years, Occu. Labour
2. Gulamnabi Karim Khan Pathan,
Age : 48 years, Occu. Labour
3. Samirkha Saeedkha Pathan,
Age : 32 years, Occu. Labour

All R/o. Shahlam Nagar, Amalner,
Dist. Jalgaon.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....
Mr. Kazi Rahil Riyazoddin, Advocate for the applicants
Mr. N. T. Bhagat, APP for respondent / State
.....

**CORAM : V. G. BISHT, J.
DATED : 25th August, 2021**

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0241 of 2021, registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 354, 452, 143, 147, 148, 149, 323, 504, 506 r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 31.05.2021 at about 09:30 pm while the informant was alone in her house, accused Chhotu Mewate (applicant no.1), Gulam Nabi Pathan (applicant no. 2), Shahrukh Jaker Pathan, Nasha Pathan, Samir Saeed Pathan, Abid Kha Mohammad Khan Pathan, Ameer Saeed Pathan committed criminal trespass and started abusing and beating her by means of fists and kick blows. Prosecution alleges that, all the said persons also pressed breasts of the informant, played their hands on her back and waist and tore her punjabi dress. Samirkha Saeedkha Pathan (applicant no.3) also gave a blow by means of article looking like steel on the head of the informant.

3. Mr. Kazi Rahil Riyazoddin, learned Advocate for the applicants, at the very outset, submitted that the incident in question allegedly took place on 31.05.2021, whereas the FIR came to be lodged on 05.06.2021 i.e. after a delay of five days which is nowhere explained. According to learned Counsel, the applicants have been falsely implicated and as far as the purported weapon of assault is concerned, the same has already been recovered by the Investigating Officer. Hence, there being no necessity of the custodial interrogation, the application needs to be allowed.

4. Mr. N. T. Bhagat, learned APP, opposed the submissions and submitted that the applicants not only formed an unlawful assembly and committed a criminal trespass but they had outraged the modesty of the informant. There being no merit in the application, the same deserves to be rejected, argued learned APP.

5. First of all, I find substance in the submission of the learned Counsel for the applicants that the delay of five days in lodging the FIR is nowhere explained by the prosecution. Secondly, as far as the purported alleged weapon of offence is concerned, when the learned APP was confronted as to the alleged injury sustained by the informant, she replied that the medical certificate reveals that the informant had sustained simple injury. Moreover, having regard to the nature of allegations and in the facts and circumstances of the case, in my considered opinion, there is no necessity of the custodial interrogation and, therefore, the present application deserves to be allowed. Hence, the following order.

ORDER

- i. In the event of arrest of the applicants in connection with Crime No. 0241 of 2021, registered with Amalner Police

Station, District Jalgaon for the offences punishable under Sections 354, 452, 143, 147, 148, 149, 323, 504, 506 r/w 34 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.15,000/- [Rs. Fifteen thousand] each, with one or two solvent sureties in the like amount.

- ii. The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

- 6. The application for anticipatory bail stands disposed of in the aforesaid terms.

[V. G. BISHT]
JUDGE