

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 ANTICIPATORY BAIL APPLICATION NO.891 OF 2021

(1) Vishal Vinayak Fulshete
(2) Rajendra Suresh Fulshete
(3) Yogesh Suresh Fulshete

...Applicants

Versus

The State of Maharashtra

... Respondent

...

Advocate for the Applicants : Mr. S. J. Salunke
APP for the Respondent – State : Mrs. V. S. Choudhari

...

CORAM : V. G. BISHT, J.

DATE : 16th SEPTEMBER, 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. 0418/2021, registered with Pathardi Police Station, District Ahmednagar for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860.

2. It is the case of prosecution that on 17.06.2021 at about 08.00 p.m. when the informant alongwith family members was

sleeping in his house, accused Vinayak Shivdas Fulshete, Vishal Vinayak Fulshete (applicant No.1), Rajendra Suresh Fulshete (applicant No.2), Yogesh Suresh Fulshete (applicant No.3) and other accused came abusing. When the informant and his family members came out of the house and tried to persuade them not to abuse, it is alleged, accused Vinayak Shivdas Fulshete assaulted on the head of informant by means of an axe while applicant No.1 gave a blow of rod on his back. It is further alleged that when informant's mother intervened applicant Nos. 2 and 3 assaulted her by means of sticks on her knee and right hand. Even brother and father of the informant were also assaulted by fist and kick blows. The informant accordingly filed the complaint.

3. Mr. S. J. Salunke, learned counsel for the applicants, submits that informant and his family members were aggressors and they assaulted the applicants and others. A counter F.I.R. to that effect bearing No. 438/2021 under Sections. 307, 326, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code came to be registered at the instance of applicant No.1. Moreover, the impugned injury allegedly sustained by prosecution witnesses is simple in nature. There is no necessity of custodial interrogation. Hence, the

application deserves to be allowed.

4. Mrs. V. S. Choudhari, learned APP for the Respondent – State, on the other hand, opposed the submissions by contending that there are eye witnesses to the incident. Investigation is in progress. In such circumstances, there being no merit in the application, the same deserves to be rejected.

5. Perusal of the F.I.R. would show that applicant No.1 had given a blow of iron rod on the back of the informant while applicant Nos. 2 and 3 had assaulted the mother of applicant by means of stick on his right hand and knee.

6. I have gone through the investigation papers. I have also read the Medical Certificate issued by Shree Hospital Tisgaon Tq. Pathardi pertaining to the informant. It appears that the nature of injury sustained by informant on his head was simple in nature. Interestingly, said Certificate nowhere shows that informant had also sustained injuries on his back as it is alleged that it was applicant No.1 who had given a blow of rod on his back. Similarly, no Medical Certificate is forthcoming pertaining to the mother of the informant who was already

assaulted by applicant Nos. 2 and 3 on her right hand and knee by means of sticks.

7. Apart from above, the investigation papers also show that the iron rod used in the commission of offence has been seized by the Investigating Officer.

8. In view of above, in my considered opinion, there is no necessity of custodial interrogation of the present applicant. I am, therefore, inclined to allow the application. Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicants - (1) Vishal Vinayak Fulshete, (2) Rajendra Suresh Fulshete, (3) Yogesh Suresh Fulshete herein in connection with Crime No. 0418/2021, registered with Pathardi Police Station, District Ahmednagar for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.20,000/- (Rupees Twenty Thousand only), each with one or two sureties in the like amount.
- (iii) The applicants shall not tamper with the prosecution evidence in any manner.
- (iv) Application is accordingly disposed off.

**(V. G. BISHT)
JUDGE**