

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1068 of 2020

1. Premchand s/o Gulabchand Nahar,
Age : 53 years, Occu. Business & Agri.,
R/o Thakrenagar, Jalna Road, Beed
2. Ashok s/o Gulabchand Nahar,
Age : 65 years, Occu. Agri.,
R/o Juna Bazar, Tq. Wadwani,
District Beed
3. Vijay s/o Gulabchand Nahar,
Age : 60 years, Occu. Agri.,
R/o Shivaji Nagar, Beed
4. Aakah s/o Ashokchand Nahar,
Age : 40 years, Occu. Medical Practitioner,
R/o Junabazar, Wadwani, Tq. Wadwani,
District Beed
5. Atul s/o Ashokchand Nahar,
Age : 38 years, Occu. Agri.,
R/o Junabazar, Wadwani,
Tq. Wadwani, District Beed
6. Ganesh s/o Vijaychand Nahar,
Age : 32 years, Occu. Business,
R/o Shivajingar, Taluka and
District Beed

APPLICANTS

VERSUS

The State of Maharashtra,
through Investigating Officer,
Wadwani Police Station,
Tq. Wadwani, District Beed

RESPONDENT

Mr. Sushant V. Dixit, Advocate for the applicants
Mr. V.M. Kagne, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 15.01.2021

PER COURT :

Heard both the sides.

2. This is an application under Section 438 of the Code of Criminal Procedure as the applicants are apprehending their arrest in connection with Crime No.219/2020 registered with Police Station, Wadwani, District Beed for the offences punishable under Sections 323, 327, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code.

3. Shortly stated, the allegations are to the effect that there has been a dispute over an immovable property bearing Gat No.217 between the family of the applicants on one hand and that of the informant on the other. It is alleged that on 11.10.2020 at about 5.00 p.m., when the informant was levelling the ground with a JCB machine, the applicants caused obstruction and assaulted him with an iron rod. In the process, even a gold bracelet was snatched by applicant No.4. The FIR was lodged and the investigation is on.

4. The learned Advocate for the applicants submits that they are being falsely implicated with a concocted version. In fact, the informant and his family were aggressors, who had assaulted applicant No.1. The FIR was lodged about that incident promptly on the very same day i.e. 11.10.2020 on

the basis of which an offence was also registered against the informant and his family members. Just to give a counter-blow, the present FIR has been lodged, which is belatedly riddled with falsity. Nothing is to be discovered from the applicants. They are businessmen, merely interested in protecting their property. Except the two accused, the other accused have been granted anticipatory bail in the matter arising from the FIR lodged by applicant No.1. The applicants are ready to cooperate the Investigating Officer in all respect. The learned Advocate would further submit that the applicants have been granted ad-interim relief and there are no allegations about they having misused the liberty and the ad-interim relief may be confirmed.

5. The learned A.P.P. opposes the application. He submits that the offence is serious. Admittedly, there was a strong motive in the form of a dispute over a piece of land. There is an injury certificate of the informant which corroborates the prosecution version. Section 327 of the IPC does not require the injury to be grievous. Since the investigation is going on and even the gold bracelet is to be recovered and when it is a matter of formation of an unlawful assembly, the application may be rejected.

6. I have carefully gone through the papers of investigation. Though the applicants are being charged inter alia for the offence punishable under Section 327 of the IPC, going by the allegations, there is serious doubt as to the ingredients of the offence as can be made out from the allegations being levelled against the applicants. As can be seen, Section 327 requires

that there should be voluntarily causing of hurt to extort the property or valuable security. Going by the allegations, though it is being alleged that applicant No.4 had snatched gold bracelet, the motive or purpose for the assault was not to steal or extort that gold ornament.

7. Be that as it may, when there are counter allegations, the FIR lodged by applicant No.1 is first in point of time, the injuries sustained by him, which are simple in nature and are not on vital part of the body, coupled with the fact that except two persons, the other accused from the counter case have been granted anticipatory bail by this Court, the applicants, except applicant No.4, are entitled to anticipatory bail.

8. As can be seen, there are specific allegations about applicant No.4 having snatched a gold bracelet. Needless to state that that ornament will have to be recovered which cannot happen except by resorting to custodial interrogation of applicant No.4.

9. True it is that as of now, there are no specific allegations about stealing of that gold ornament, but then at this juncture, that fact is inconsequential. The allegations clearly indicate that he had snatched gold bracelet and if that be so, it will have to be recovered by resorting to his custodial interrogation. Therefore, to his extent, the application cannot be allowed.

10. The application of applicant Nos.1 to 3, 5 and 6 is allowed. The ad-interim relief granted to them by the order dated 10.11.2020 stands confirmed with the same terms and conditions.

11. Application to the extent of applicant No. 4 Aakash Ashokchand Nahar is rejected. The ad-interim relief granted to him by order dated 10.11.2020 is cancelled.

[MANGESH S. PATIL]
JUDGE

npj/ABA1068-2020