

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

ANTICIPATORY BAIL APPLICATION NO. 1051 OF 2021

1. Pravin s/o Kalyan Kakade ... **Applicant**
Age 26 years, Occu: Education,
2. Utkarsh s/o Ramesh Kakade
Age 19 years, Occu: Education
3. Ramesh s/o Jagannath Kakade,
Age 55 years, Occu: Agriculture

All R/o Kinh, Tq. Ashti, District Beed

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Inspector,
Police Station, Ashti,
Tq. Ashti, District Beed

Mr. S. J. Salunke & Mr. A. S. Kakade, Advocates for the applicants,
Mrs. V. S. Chaudhari, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 21st September, 2021
PRONOUNCED ON : 23rd September, 2021

ORDER:

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.0250/2021 registered with Ashti Police Station, District Beed for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 327, 504, 506, 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that on 03.08.2021, at about 06.00 p.m., while the informant was proceeding towards his house, he found the cattle of accused namely Kalyan Jagannath Kakade grazing in his field. He, therefore, asked the said accused not to cause damage to his field by grazing cattle. Then, on the same day, at about 8.00 p.m., applicant Nos. 1 and 2 and other unknown persons came to him and applicant No.1 asked the informant as to why he had asked his father not to graze their cattle. The informant tried to persuade him. It is alleged that all of them got annoyed and started beating him by means of kick and fist blows. Prosecution further alleges that applicant Nos. 1 and 2, with a view to kill the informant, gave blows of wooden log on his head but somehow he warded off but ultimately the blow fell on his right shoulder and thereby caused fracture. It is further alleged that applicant No.3 also beat the informant on his chest and abdomen by means of wooden log. The applicant no.2 then removed Rs.4,300/- from his pocket. The informant accordingly lodged the report.

3. Mr. S. J. Salunke, learned counsel for the applicants, submits that the alleged incident took place on 03.08.2021 and the first information report came to be filed on 12.08.2021. Thus, there is delay of 9 days and there is no explanation to that effect. Learned counsel then submitted that arising out of same incident, applicant No.1 herein also filed first information report and as a counterblast, the first information report in question came to be filed by the informant. There are no criminal antecedents. The applicants are ready to cooperate the

investigating officer and therefore, in such circumstance, the application deserves to be allowed, argued learned counsel.

4. Mrs. V. S. Chaudhari, learned A.P.P., would oppose the submissions by contending that there are eye witnesses to the incident who support the version of the informant. Not only the applicants alongwith others formed unlawful assembly, armed with deadly weapons, but also caused grievous injury to the informant. Learned A.P.P. also invited my attention to the investigation papers including medical certificate and then would submit that investigation being in progress, the application deserves to be rejected.

5. I find substance in the submission of learned counsel for the applicants that subject first information report came to be filed on 12.08.2021 at about 23.29 hours whereas the incident in question had taken place on 03.08.2021. There is absolutely no explanation to that effect. It is also pertinent to note here that out of the same incident, applicant No. 1 herein also filed first information report bearing Crime No. 0235/2021 under various sections of I.P.C. on 05.08.2021 i.e. after two days of the incident in question. Thus, there appears to be some sort of enmity between the parties.

6. I have also gone through the investigation papers. It appears that in the said incident, the informant sustained two injuries, one of them was abrasion on the left middle and index fingers by means of hard and blunt object and nature of injury was simple. Second injury

was on right shoulder and as there was fracture, it was grievous injury caused by means of hard and blunt object.

7. On the other hand, the applicants have also produced on record medical certificate pertaining to applicant No.1 issued by the Medical Officer, Rural Hospital, Ashti. It shows that applicant No.1 was examined on 03.08.2021 i.e. on the day of incident and the concerned medical officer noted head injury and the history of assault given by the applicant No.1 that the head injury was caused by known person.

8. From the above, prima facie it is more than clear that both the parties had assaulted each other. As already pointed out, there appears to be enmity between them.

9. Having regard to the facts and circumstances of the case, in my considered opinion, the present application deserves consideration with certain conditions. Hence, I pass the following order.

O R D E R

- i. In the event of arrest of the applicants in connection with Crime No.0250/2021 registered with Ashti Police Station, District Beed for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 327, 504, 506, 34 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/- [Rs. Twenty thousand only] each, with one or two solvent sureties in the like amount.

- ii. The applicants shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
 - iii. The applicants shall not tamper with prosecution evidence in any manner.
10. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC