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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1098 OF 2020
WITH
CRIMINAL APPLICATION NO.2199/2020

1) Ratanlal s/o Pannalal Nahar
and Ors. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.SS Ladda,Advocate for Applicants;
Mr.AM Phule,APP for Respondent-State.
Mr.SV Dixit, Adv. h/for Mr.DA Madke, Adv. To assist
APP.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 4th January, 2021.

PER COURT :-

1. Criminal Application No.2199/2020 moved
to assist APP is allowed and disposed of.

2. ABA No.1098/2020 has been filed by the
applicants for getting pre-arrest bail as they are
apprehending their arrest in connection with CR No.
218/2020 dated 11.10.2020 registered with Wadavni
Police Station, District Beed for the offences
punishable under Sections 327, 323, 143, 147, 148,
149, 504, 506 of IPC.

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3. Heard learned Advocates and learned APP appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicants that there is a chequered history of litigation between family of the applicants and the informant. Civil disputes are pending since last about 40 years. It appears that one more FIR has been filed by the informant, complaining that an incident had taken place on 11.10.2020 near the petrol pump owned by present applicant No.4 when the informant is stated to have proceeding towards Wadavni from Beed. It is also stated that the said incident had taken place between 12.00 to 12.30 PM, however, there is CCTV footage, showing that applicant No.5 was in his jewelry shop. Applicant No.3 was in hospital; yet they have also been roped. The contentions in the FIR do not require physical custody of the present applicant and, therefore, the learned Advocate for the applicants canvassed for grant of pre-arrest bail.

5. Per contra, the learned APP, well

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assisted by learned Advocate representing the informant, submitted that though the civil disputes are pending; yet the applicants are not restricting themselves from indulging in criminal activities. The informant was severely beaten with an iron rod which was used by accused – Parasmal, resulting in the fracture of right hand of the informant. The informant has also sustained serious injury to his stomach, which could be noticed in sonography report. Accused No.2 had used a wooden log and accused No.4, by threatening with the rod, had taken away gold chain, weighing two tolas, from neck of the informant. A complaint application has been further filed by the informant on 15.10.2020 to the police station stating that they should add Section 395 and 307 of IPC. He has also produced the photographs, showing the injury sustained to him and also the sonography report. Definitely, thorough investigation is required and, therefore, the application deserves to be rejected.

6. At the outset, at this stage, we will have to go by the allegations set out in the FIR. The plea of alibi will have to be proved by the

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applicants-accused by permissible mode, including Indian Evidence Act and, therefore, the documents, which are part of the CCTV footages, cannot be looked into.

7. Another fact, that is required to be noted is, from the documents those have been produced by the applicants, it appears, that present applicant No.5 has lodged a report against the informant and five other persons on 12.10.2020 at about 3.05 hrs in respect of the incident that had allegedly taken place at between 17.00 to 17.20 hrs. on 11.10.2020. It is registered with Wadavni police station. However, the alleged incident stated therein is subsequent to the timing given in the present FIR. The said FIR is also subsequent to the present FIR. We may not consider the said FIR.

8. As regards the present FIR is concerned, it is certain that there appears to be litigation between two families in respect of the property. However, according to the informant, the said litigation is going on since last 40 years and, therefore, false implication, at this prima facie

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stage, cannot be inferred. The allegations in the FIR will have to be considered, taking into consideration the role attributed to each of the applicants. It has been contended by the complainant that there is the dispute in respect of Gut No.217, situated at Wadavni, which is stated to be a barren. The informant received the information from his nephew that the present applicants are cleaning the land with the help of JCB and, therefore, the informant started to go towards Wadavni from his residence at Beed. When he reached near the petrol pump of present applicant No.4, at that time, he was intercepted by applicant No.2. He started asking as to why the informant has give some notice in respect of the land in Daily newspaper viz. Parshvabhoomi. The informant says that the other applicants were also present there. They also started asking him the same question and were abusing him. The informant tried to say that they should not abuse him. At that time, applicant No.2 took out the wooden log and gave a blow thereof on the head of the informant, resulting in the injury. The others have assaulted him with kicks and fists blows. While assaulting,

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accused No.4 had snatched away two tolas gold chain from the neck of the informant. He was thereafter taken to the police station Wadavni by his brothers, whom he had later on called. He was then referred by the police to Civil hospital and then he lodged the report. Thus, the contents of the subject FIR would show that there is specific role attributed to applicant Nos.2 and 4 from whom the recovery is contemplated and, therefore, this Court cannot exercise extraordinary jurisdiction in their favour. However, as regards rest of the applicants are concerned, in the FIR, the informant has not stated any further role, which would amount to serious allegations, though in his application to assist APP, he has given the complaint application, in which he tried to point out the role to the other applicants also; yet at this stage, it cannot be considered and, therefore, the application deserves to be partly allowed. Hence, following order, -

ORDER

- i. The Anticipatory Bail Application stands rejected in respect of applicant No.2 - Vinodkumarn s/o Pannalal Nahar and applicant No.4 - Manikchand s/o Hiralal Nahar.

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ii. The interim relief granted by this Court on 13.11.2020 stands vacated as against them;

iii. In the event of arrest of applicant Nos.1, 3, 5 and 6, viz. Ratanlal s/o Pannalal Nahar; Dr.Parasmal s/o Pannalal Nahar; Vaibhav s/o Manikchand Nahar and Vinay s/o Manikchand Nahar respectively, in connection with CR No.218/2020, dated 11.10.2020, registered with Wadavni Police Station, District Beed, for the offences punishable under Sections 327, 323, 143, 147, 148, 149, 504, 506 of IPC, they be released on PR of Rs.30,000/- with two sureties of Rs.15,000/- each.

iv. The applicants shall not indulge in any criminal activities, nor they shall tamper with the evidence of the prosecution in any manner.

v. The applicants should remain present before the Investigating Officer on every Tuesday and Friday between 10.00 AM to 12.00 PM till filing of charge sheet.

(SMT. VIBHA KANKANWADI)
JUDGE