

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

ANTICIPATORY BAIL APPLICATION NO.1157 OF 2020

MANIKRAO RAMRAO KUNDARGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Chondhekar Balaji S.
APP for Respondent/State: Mr. S.W. Mundhe
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CORAM : MANGESH S. PATIL, J.

DATE : 09.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure in connection with Crime No.320/2020 registered with Sengaon Police Station, Tq. Sengaon Distric Hingoli for the offence punishable under Sections 307, 326, 324, 147, 148, 149, 323, 379 and 506 of the Indian Penal Code.

2. The allegations are to the effect that the paternal uncle and his cousin asked the informant to help the family members in harvesting soybean crop from their field Gat No.90. It is alleged that when he along with his family members went to the field, it was found that around 8 quintal of soybean was already harvested by the accused persons and was stolen. When they started questioning accused Bhagorao Sonabaraao Kundarge, all the other accused who were hiding in the nearby crop surfaced. Some of them were having iron rods, sticks and axe. It is then alleged that the accused Dattarao and Bhagorao instigated the other accused to assault him and accordingly he was assaulted due to which he sustained fracture injury to the right hand. He lodged the report and the offence was registered.

3. The learned advocate for the applicant points out that already the Application has been withdrawn to the extent of applicant Nos. 1, 2, 4 and 6. The Application as of now stands only in respect of the applicant Nos. 3 and 5. Both of them were granted ad-interim anticipatory bail by the order dated 14.12.2020. Since thereafter they have attended the Police Station whenever called by the Investigating Officer. There are no allegations about they having refused to co-operate the Investigating Officer.

4. The learned advocate would further submit that the applicant Nos.3 and 5 have not been specifically named in the FIR. No role is attributed to them muchless either of carrying out the assault or for stealing the crop. The rest of the accused have already been granted bail. None of the offences can be made out from the FIR and the ad-interim relief may be confirmed.

5. The learned APP submits that the offence is serious. The informant has sustained a fracture. It is a matter of formation of an unlawful assembly with an object to, firstly, harvest the crop and then to assault the informant and his family members if they intervened. Though the name of applicant Uttam is not appearing in the FIR, there is a reference and role attributed in the FIR to applicant Uddhav who is also known as Baban. The other accused who are sailing in the same boat have already been arrested and consequently Udhav @ Baban may not be shown any leniency. Custodial interrogation of the applicant is necessary. Though the charge sheet has been filed, the Investigating Officer has a right to resort to their custodial interrogation and the Application be rejected.

6. I have carefully gone through the papers. Admittedly, name of Uttamrao does not appear in the FIR and no role is attributed to him in any of the episodes.

7. So far as Uddhav @ Baban, in an omnibus manner it has been alleged in the FIR that along with the other accused even he has taken part in carrying out the assault. Further, though the investigating is stated to have been completed and a copy of the charge sheet can be found in the papers of the investigation, conspicuously no medical certificate is available to describe the nature of the injury sustained by the informant, much less any fracture as is being alleged. It was merely suspected that there was a fracture. However, no further papers can be found to describe actual nature of the injury sustained by the informant.

8. Considering all the aforementioned facts and circumstances coupled with the fact that the applicants Uddhavrao @ Baban and Uttamrao have attended the concerned police station pursuant to the conditions subject to which they were granted ad-interim anticipatory bail, it deserves to be confirmed with the same terms and conditions.

9. The Application is allowed. The ad-interim relief granted by the order dated 14.12.2020 stands confirmed with the same terms and conditions.

(MANGESH S. PATIL, J.)

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