

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1139 OF 2021

1. Avantika @ Avantikabai w/o
Pralhad Oname
 2. Uddhav @ Udhav s/o
Pandurang Oname.
- Applicants
- Versus
- The State of Maharashtra. Respondent

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Mr. A.D. Oswal, Advocates for the applicants.
Mr. A.S. Shinde, A.P.P. for respondent – State.
Lex Aquilla through it's partner Ms. M.S. Mhase,
Advocate assisting the PP.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 23-12-2021.

ORDER :

1. The applicants are apprehending arrest in Crime No.150/2019 registered with Shirur Anantpal Police Station, District Latur for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 504 read with Section 34 of the Indian Penal Code (for short "I.P.C.").

2. First Information Report (for short "F.I.R.") was lodged by Namdeo Sude. It is alleged that complainant is resident of Dangewadi, Taluka Nilanga, District Latur. He is owner of agricultural land situated at Kalandi Shivar bearing Survey No. 17-B.

Adjacent land is owned by Satyawar Oname. There is dispute between both the sides in relation to said property since last two years. Proceedings are also pending in the Court. On 04.10.2019 at about 7.00 p.m., father of complainant Shri Subhash Sude, grandfather Dayanand Namdeo Sude, uncle Sanjay Sude, grandfather Dnyannoba Sude, uncle Balaji Sude were present at the field. At that time Dnyannoba Angad Oname, Jagannath Vishwambhar Oname, Rajkumar Vishwambhar Oname, Dinanath Pralhad Oname, Pralhad Pandurang Oname, Balaji Pandurang Oname, Uddhav Pandurang Oname, Ram Baburao Oname, Laxman Pandu Oname, Pandu Ramrao Oname, Bhagwat Baburao Oname, Angad Namdeo Oname, Satyawar Namdeo Oname, Namdeo Satyawar Oname, Karan Satyawar Oname, Kushabai Vishwambhar Oname and Avantika Pralhad Oname came to the spot with sticks, axe, Katti and sickle. They insisted that the suit filed in the Court be withdrawn. They assaulted them with weapons and caused injuries. Dnyannoba Angad Oname assaulted complainant with axe on his head. Father of the complainant was injured. He suffered injuries to his head, legs. Complainant called police. All of them were taken to hospital at Latur. Subhash Sude died.

3. F.I.R. was registered vide Crime No. 151/2019 on 04.10.2019 by Dnyannoba Oname for offences under Sections 143, 147, 148, 149, 307, 325, 326, 324, 323 of I.P.C. It is alleged that, complainant's father owns agricultural land at Survey No. 16-A admeasuring 90 Gunthas. The property owned by Sanjay Sude is

adjacent to their property. Since last two years there is dispute between both the parties on account of property. Dispute is pending in Court. On 03.10.2019, uncle of complainant, Satyawar Namdeo Oname was assaulted by Raju Sude, Dayanand Sude and Jitendra Sude. The complainant had visited police station to lodge the complaint. The police gave medical papers and they went to Nitur. Doctor was not available. Treatment was given by nurse and they were called on the next day. On 03.10.2019, the complainant, Jagannath Oname, Raju Oname, Dinanath Oname, RamOname, Namdeo Oname were near their field. Sanjay Sude came from behind and gave blow of stick on head of complainant resulting in head injury. He was unconscious. When he regained consciousness, he saw commotion. Raju Sude, Sanjay Sude, Dnyanoba Sude, Balu Sude, Jitendra Sude, Dayanand Sude, Subhash Sude, Namdeo Sude were armed with sticks and they were assaulting Jagannath Oname, Raju Oname, Pandu Oname. The complainant ran towards his village. The injured persons also ran into village. They went to police station. They were sent to hospital for treatment.

4. Applicants had preferred application for anticipatory bail before the Court of Session which has been rejected by order dated 04.08.2021.

5. Learned Advocate for the applicants submitted that the applicants have been falsely implicated in this case. There is no

evidence to show involvement of the applicants. The allegations in the F.I.R. are vague. Applicant No. 1 is a lady aged 65 years. The allegations against her are vague. Co-accused were granted regular bail by this Court. The role assigned to the applicants and accused admitted to bail by this Court is similar. Complainant's supplementary statement is improvised. Most of the eye witnesses have not referred to the involvement of applicants in the crime. There is variation in the F.I.R. and supplementary statement. Cross F.I.R. has been registered against opponents. The complainant in the present case has implicated several persons. About 17 persons were implicated in this F.I.R. The applicants are implicated due to enmity. The dispute is in respect to agricultural land. Hence, several persons were implicated in crime.

6. Since the Court had indicated disinclination to grant relief to applicant No.2, learned Counsel for the applicants sought permission to withdrawn application of applicant No. 2 and submitted that he may be permitted to surrender before the Investigating Officer on 03.01.2022. Till the applicant No.2 surrenders, the protection granted to him may be continued.

7. Learned A.P.P. and learned Advocate for the complainant submitted that involvement of the applicants is disclosed right from inception. Applicant No. 1 is named in the F.I.R. She was absconding. Proceeding under Section 82 of the Code of Criminal Procedure (for short "Cr.P.C."). Application for anticipatory

bail is not maintainable. The offence is of serious nature. Her custodial interrogation is necessary. Proclamation under Section 82 of Cr.P.C. has been issued against her. Her involvement is disclosed in the F.I.R. as well as in the supplementary statement of the complainant. She is not entitled for parity. Reliance is placed on the decision of Supreme Court in the case of ***Prem Shankar Prasad vs State of Bihar and another (Criminal Appeal No.1209 of 2021)*** and ***Lavesh vs State (NCT of Delhi), 2012 (6) Supreme 363***.

8. From the F.I.R. and other documents, it is apparent that there is dispute between two sides on account of agricultural land. The property belonging to both the parties is situated adjacent to each other. On the day of incident accused had assaulted the complainant and others. Father of complainant succumbed to the injuries and another injured died due to injuries. F.I.R. was registered against 17 persons. Applicant No. 1 was shown present at the time of incident of assault. F.I.R. attributes specific role of assault to the accused who are armed with weapons. No such specific overt act is attributed to the applicant No.1. Supplementary statement of complainant was recorded on 14.10.2019. In this statement role of assault is attributed to the persons named therein. It is alleged that applicant No.1 was instigating others to assailant the opponents. There is improvement in the version of complainant. It also signifies that applicant No.1 was not involved in assault. The statement does not indicate that applicant No.1 was armed with weapon. Balaji Sude was one of the injured person. His statement

was recorded on 14.10.2019. He has not referred involvement of applicant No.1. statement of Sanjay Sude was recorded on 22.10.2019. He is one of the injured person. He has not named applicant No. 1 as assailant. He stated that he subsequently came to know that Namdeo Sude has lodged complaint with the police against 17 persons including applicant No.1. Statement of Dnyanoba Sude was recorded on 22.10.2019. It is similar to the statement of Sanjay Sude.

9. Co-accused Laxman Pandu Oname and Balaji Pandu Oname had preferred application for regular bail before this Court. Their application was allowed by order dated 09.12.2020. It was observed that it is not disputed that there is long standing enmity in respect of agricultural land and civil suit is pending between the parties. In respect to incident dated 03.10.2019, complaint was lodged on 04.10.2019. Names of these accused were mentioned in F.I.R. However, no specific role was attributed to them. Supplementary statement of complainant was recorded on 14.10.2019 and they were ascribed role of instigators for the first time. Possibility of implicating each and every person cannot be ruled out. Co-accused Dnyanoba has lodged complaint against the informant and others vide Crime No.151/2019 for the offences punishable under Sections 307, 143, 147, 148, 149 of I.P.C. on 04.10.2019. There was free fight between the members of two groups. Individual acts of each and every person are required to be considered. In the supplementary statement, role was assigned to

Laxman Oname and Balaji Oname. Even if the supplementary statement is considered, the extent of specific role ascribed to the said accused is required to be considered. The injured witnesses have not stated presence of the said applicants. Hence, they are entitled to be released on bail.

10. The above order was certainly passed after arrest. The facts apply to case of applicant No.1. Cross case was registered from the applicants' side vide Crime No. 151/2019. The complainant in Crime No. 151/2019 is accused in Crime No. 150/2019.

11. Learned A.P.P. submitted that proclamation was issued against the applicants under Section 82 of Cr.P.C. Attempts were made to arrest the applicant. She was absconding.

12. Learned Counsel for the applicants submitted that the documents annexed to the application which form part of charge-sheet, do not indicate compliance of Section 82 of Cr.P.C. There was no proclamation issued by the Court which is required by law under Section 82 of Cr.P.C. Applicant No. 1 was all the time available at the place of her residence. Prosecution is trying to impress that on 2 / 3 occasions attempts were made to search her. Hence, the decision relied upon by learned A.P.P. is not applicable in the present case.

13. The Police Inspector has preferred application before

J.M.F.C. on 16.12.2019 seeking permission to file charge-sheet under Section 299 of Cr.P.C., since the accused including the applicant was not available. The Court passed an order on 16.12.2019 directing Investigating Officer to comply with provisions of Sections 82, 83 Cr.P.C. The prosecution has relied upon declaration dated 26.12.2019 purportedly under Section 82 of Cr.P.C. directing applicant No. 1 to appear before the police station or Court. Section 82 of Cr.P.C. refers to procedure for person absconding. Section 83 relates to attachment of the property of person absconding. There is nothing on record to show that procedure embodied therein is complied. There is no applications for issuing proclamation on record. The Investigating Officer had preferred application for permission to file charge-sheet under Section 299 of Cr.P.C. in which Court had directed them to comply said provisions.

14. Applicant No.1 is a lady, aged about 65 years. Complainant has implicated several accused. In the F.I.R. presence of applicant No.1 is shown at the scene of offence and specific overt act has not been attributed to her. In the supplementary statement recorded belatedly, it is alleged that she was instigating the others. The other injured persons have not referred to her presence. There are no criminal antecedents against her. The co-accused similarly placed were granted regular bail.

15. In view of the above, applicant No.1 can be granted

anticipatory bail on certain terms and conditions. Hence, the following order.

ORDER

- (i) ABA No. 1139 of 2021 is partly allowed.
- (ii) Application of applicant No. 2 Uddhav @ Udhav s/o Pandurang Oname is allowed to be withdrawn and stands disposed of
- (iii) Application of applicant No.1 Avantika @ Avantikabai Pralhad Oname is allowed.
- (iv) In the event of arrest of applicant No.1 in Crime No.150/20219 registered with Shirur Anantpal Police Station, District Latur, applicant No.1 be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- (v) Applicant No.1 shall not enter within the limits of village Dangewadi, Taluka Nilanga, District Latur till further orders.
- (vi) Applicant No.2 is permitted to surrender before Investigating Officer in the present case at Shirur police station on 03.01.2022 at 11.00 a.m. The interim protection shall continue till 03.01.2022. No extension of time to surrender would be granted.
- (vii) Application for anticipatory bail stands disposed of.

(PRAKASH D. NAIK, J.)