

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 BAIL APPLICATION NO.1364 OF 2021

KAMAJI KHEMAJI MUDHOL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. S.R.Bagal h/f Mr. Gadegaonkar Bharat N.
APP for Respondent-State : Mr. N. T. Bhagat.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-12-2021

PER COURT :

1. Present application has been filed under Section 439 of the Code of Criminal Procedure.
2. The applicants have been arrested in connection with Crime No.201 of 2021 dated 24-09-2021, registered with Police Station Kurunda Tq.Basmath Dist.Hingoli, for the offence punishable under Section 307, 447, 324, 504 read with 34 of the Indian Penal Code.
3. After taking this Court through the contents of the FIR, it has been submitted on behalf of the applicants that the incident had taken place on 22-09-2021, however the FIR came to be lodged on 24-09-2021. There is inordinate delay in lodging the same. Further, the applicants had lodged report with Police Station Ardhapur on the same

day i.e. 22-09-2021 in respect of the same incident and it was under Section 324, 323, 504, 506 read with 34 of the IPC. It was also submitted that since the FIR lodged on behalf of the applicants gives the place of offence as their field and their field goes within the jurisdiction of Ardhapur Police Station, it has been lodged at that place. He also pointed out that earlier also on several occasions when there was highhanded act on the part of the informant and his family members, offences have been registered at the behest of the applicant. It was the informant side who was aggressive and, therefore, a false complaint has been lodged. The investigation is almost over and for that purpose the applicants deserve to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that since the applicants are the neighbours, possibility of tampering cannot be ruled out. Perusal of the FIR would show that role is attributed to each applicant and taking into consideration those statements, two sticks have been used and one axe has been used. Applicant Maroti Kamaji Mudhol had assaulted injured with the help of axe on his head. It indicates his intention to kill the injured.

5. It is to be noted that the incident is stated to have occurred on 22-09-2021, however the FIR has been lodged on 24-09-2021. In the FIR it is stated that the informant and the injured who is his maternal uncle had received injuries, however, the serious injuries were to the uncle who was initially taken to Dr.Bharat Yeole at Girgaon and then he referred uncle to Nirmal Hospital, Nanded. Informant's uncle was admitted in that hospital and he was not conscious and, therefore, informant was taking care of his uncle. It was the reason for the delay. Whether the delay that has been tried to be explained was sufficient or not would be the matter of appreciation of evidence. However, if we consider the contents of the FIR it states that applicant No.1 assaulted maternal uncle of the informant on his leg. Applicant No.3 assaulted on the hands of uncle by means of stick, and then it is stated that the applicant No.2 had assaulted the uncle with axe on his head. The police papers show two medical certificates of the injured. One is issued by Dr. Bharat Yeole, which shows five injuries. First injury is deep wound of 3 x 4, on the head, especially the area is forehead and it is said to be dangerous and with axe. Second injury appears to be Hematoma of size 4 x 4, on the middle side of head stated to be grievous. Third

injury is lacerated wound of size 3 x 4, on the right side head, fourth injury is abrasion wound of size 3 x 3, over right leg, and fifth injury is abrasion of size 2 x 1, over right thumb. Another medical certificate gives two injuries. First injury is to the brain and another is blunt chest injury to the right side.

6. It appears that the FIR that was lodged by applicants side to Ardhapur police station was first in time and contents of the said FIR would show that one Vithal Balaji Ingole (who is the maternal uncle in this case), Gangadhar Balaji Ingole and Amol Navnath Karhale (informant) had assaulted the applicants side. Vithal is alleged to have assaulted by means of axe to applicant No.2 Maroti. The police papers show that almost entire investigation is over and the act of filing the charge-sheet appears to be remained in view of the fact that even the necessary documents in the format of filing charge-sheet are ready. It also appears that the weapons allegedly used in the commission of the offence have been recovered. The objection which Investigating Officer is taking is only the fact that possibility of commission of similar offence cannot be ruled out, tampering and threat to the life of applicants, those reasons cannot be said to be the reasons on which the application can be rejected.

7. When the investigating is complete and the evidence on record shows that at the most there is some case against applicant No.2 under Section 307 of the IPC, but not as against applicants No.1 and 3, they deserve to be released on bail. Hence, following order.

ORDER

- 1) Application is allowed in respect of applicants No.1 and 3 only.
- 2) Applicant No.1 Kamaji s/o Khemaji Mudhol and applicant No.3 Parmeshwar s/o Kamaji Mudhol, arrested in connection with Crime No.201 of 2021, registered with Kurunda Police Station, Dist. Hingoli, for the offences punishable under Section 307, 447, 324, 504 read with 34 of the IPC, be released on P.R. of Rs.30,000/- each (thirty thousand) with two solvent sureties of Rs.15,000/- each (fifteen thousand).
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not indulge in any criminal activity.
- 5) The applicants No.1 and 3 to attend Kurunda Police Station, District Hingoli, on every Monday, Thursday and Saturday between 10.00 a.m. to 01.00 p.m., till filing of charge-sheet.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.