

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2002 OF 2021

1. Rajesh Bhaskar Suroshi,	
2. Rakesh Pandurang Suroshi	Applicants
versus	
The State of Maharashtra	Respondent

Ms.Sushma T. Mishra for applicants.

Mr.R.M.Pethe, APP, for State.

ASI U.S.Deshpande, Kalyan Taluka Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th September 2021

PC :

1. The applicants are seeking pre-arrest bail in CR No.I-210 of 2021 registered with Kalyan Taluka Police Station for offences under Sections 326, 324, 323, 504 r/w 34 of Indian Penal Code. The FIR was lodged on 18th April 2021.

2. The case of prosecution is that on 16th April 2021 at about 12.30 pm the complainant was proceeding towards his residence through his vehicle. He noticed that land bearing Survey No.108/1 owned by his mother and step mother, was being measured by Surveyor. The complainant questioned the surveyor as to who has authorized to conduct the measurement and told him that dispute in relation to property is pending in Court. He was also questioned as to why notice was not given to him. The surveyor told him that measurement is being conducted at the instance of complainant's step brother (applicant no.1) and that he should talk to him. The

complainant approached applicant no.1. He was accompanied by applicant no.2 and two other unknown persons. The applicant no.1 abused and assaulted the complainant by fist blows. Applicant no.2 caught hold of the complainant and two unknown persons assaulted him by kick blows. Applicant no.1 assaulted complainant by sickle on his head. The persons who had gathered at the place of incident intervened. The complainant approached police station. He was forwarded for medical examination. He was admitted to Rukhminibai Hospital. He proceeded to the said hospital. Treatment was given to him. He has sustained head injury. The injuries were stitched. He was taken for C.T.scan. Thereafter he was admitted to private hospital. On recording his statement, the FIR was registered. Subsequently Section 326 of IPC was invoked.

3. The applicants had preferred application for anticipatory bail before Sessions Court, which has been rejected by order dated 8th July 2021.

4. Learned advocate for applicants submitted that the complaint is false. Admittedly the applicants were on the field and the measurement was being conducted. According to complainant, he came to the spot subsequently. Both the applicants have sustained injuries. The complainant had tried to run over by using vehicle. The applicants had approached police for lodging the complaint. Instead of taking cognizance of the offence, non-cognizable complaint was registered. The Police are under influence of the complainant. The version of applicant no.1 stated by him to police was altered/deleted. There are three NC complaints in respect to the same incident registered at the instance of applicant no.2 having different versions.

There was an attempt to kill the applicants by the complainant while he tried to run over them by vehicle.

5. Learned APP submitted that specific role has been attributed to the applicant. The applicant no.1 had assaulted the complainant by sickle which has resulted in injuries to his head. The version of complainant is fortified by injury certificate which mentions that the complainant had sustained two injuries to parietal bone with sharp or blunt object. The first injury is grievous and second one is simple. The offence is of serious nature. The NC complaint was lodged by applicant no.1 and therefore he is aware of the alterations, if any, carried out in respect to the said complaint.

6. In rejoinder, learned counsel for applicants submitted that NC complaint dated 16th April 2021 clearly reflects that applicants had sustained injuries. They were threatened by the complainant, assaulted and that he tried to run over them with the help of vehicle.

7. Both the sides are related to each other. It appears that the dispute is with regards to subject property and both the parties are claiming rights and interest in the property. The tenor of the FIR indicate that on 16th April 2021 the applicants were at the property. The complainant noticed that someone was carrying measurement and he tried to intervene. The measurement was being conducted at the instance of applicant no.1 and while he accosted him, the applicants had alleged assaulted him. It is pertinent to note that applicant no.1 has also sustained injuries which is born out by the injury certificate issued by hospital. The injury certificate mentions that applicant no.1 was assaulted with blunt object. According to the

advocate for applicants, injury certificate also refers to the vehicle number which was used by the complainant. Admittedly the complainant was there with the vehicle which is spelt out in the complaint. I have perused the copy of NC complaint. In the written NC complaint dated 16th April 2021 recorded at the instance of applicant no.1 indicate that accused and the applicants are related to each other. Civil Suit is filed in respect to the property and on account of said fact the complainant was at logger head. While applicant no.1 was conducting measurement of the property, the complainant in the present FIR abused, intimidated him that he would be assaulted. The said certificate also refers to the fact that vehicle which was in the possession of complainant of which number is mentioned therein, was used by the complainant and tried to run over the accused in the present case. However, the later portion regarding attempt by original complaint to use the vehicle is either struck off or deleted with the help of whitener. Learned counsel for applicants has also produced printed copy of NC with regards to the same instance dated 16th April 2021 which mentions that offences were registered against opponents u/s.323, 504, 506 of IPC. The said complain was purportedly deleted by police and the version reflected therein shows that during scuffle the applicant no.1 fell down and he sustained minor injury. There appears to be different version in the NC complaint which supports the contention of applicants that correct version of applicant no.1 has not be recorded. The dispute has arisen on account of property. Considering the factual matrix of the case, applicants need not be subjected to police custody. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application is allowed and disposed of;

- (ii) In the event of arrest of applicants in CR No.I-210 of 2021 registered with Kalyan Taluka Police Station, the applicants be released on bail on their executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall appear before Investigating Officer on 22nd, 23rd and 24th September 2021 between 11 am and 1 pm, and thereafter as and when called for till filing of charge sheet;
- (iv) The applicants shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

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