

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2228 OF 2021

1. Nikhil Suresh Mhatre
2. Ritesh Deepak Patil
3. Dipesh Haresh Gawand ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. Ghanshyam Upadhyay i/by Law Juris, Advocate for the Applicants.

Mr. R. M. Pethe, APP for the Respondent – State.
Mr. Kilje P. S. (PSI) Kashmirira Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th SEPTEMBER, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. 383 of 2021 registered with Kashmirira Police Station for offences under Section 353, 143, 145, 147, 427, & 504 of Indian Penal Code (for short “IPC”). The First Information Report (for short ‘FIR’) was registered on 13th May, 2021.

2. The case of the prosecution is that the complainant is working as junior engineer at Mira Bhayandar Municipal Corporation. The plot of land situated at Penkarpada bearing Survey No.173 old, new Hissa No.5 was acquired by government and reserved. In order to protect the said plot of land from encroachment, work of constructing boundary had commenced.

One of the accused came to the spot and threatened the workers. The accused started damaging the work which was carried out and obstructing the supervisor and caused damage to the front portion. The FIR was registered against several persons.

3. The applicants and the co-accused had preferred an application for anticipatory bail before the Court of Sessions. The application was partly allowed. The application was preferred by 11 persons and relief was granted to 8 persons. The application by applicants was rejected.

4. Learned counsel for the applicants submitted that there is delay in lodging the FIR. The registration of FIR is politically motivated. The incident had occurred on 12th May, 2021 late in the evening and the FIR was registered on 13th May, 2021 at about 6.00 p.m. The story has been concocted. The accused were unknown to the complainant, however, the names about 17 persons were reflected in FIR which indicate that there were deliberations to implicate the accused in the crime. There were no special reasons to distinguish the the case of the applicants from those, who were granted relief.

5. Learned APP submitted that work was carried at the place of incident as per approved plans. The accused had tried to intervene and indulge in violent acts. The case of the applicants was distinguished by the learned Judge based on the material collected during investigation. The applicant No.3 is the admin of whats-app group created by accused. Applicant No.2 had instigated other associates, who had obstructed the public servants from discharging their duty. He further submitted that whats-app messages were exchanged by the accused amongst themselves and

they had gathered at the spot. Cell phone of the applicants were required for the purpose of investigation.

6. In rejoinder learned counsel for the applicants submitted that the applicants are willing to cooperate with the investigation. They would appear before the Investigating Officer and hand over the cell phone for the purpose of investigation.

7. I have perused the FIR and documents on record, it is noted that about 17 persons were named in the FIR alleging that they had obstructed the public servants from discharging their duty. About 11 persons had applied for anticipatory bail before the Sessions Court and that applications preferred by 8 persons were allowed. Relief was refused to the applicants. The distinction to take different view by learned Judge is that applicants are admin of Whats-app group instigated others. The applicants can be directed to cooperate with investigation by producing their cell phone. Considering the factual aspects, custodial interrogation of the applicants is not necessary.

8. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application No.2228 of 2021 is allowed;

(ii) In the event of arrest of the applicants in connection with C.R. No. 383 of 2021 registered with Kashimira Police Station, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;

(iii) The applicants shall attend the investigating officer on 22nd 23rd & 24th September, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.

(iv) The applicants shall hand over their cell phone to the Investigating Officer and cooperate with the investigation.

(v) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)