

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (ABA) No.341/2021

Shaikh Nasir Shaikh Shabbir and others V State of Maharashtra
and

Criminal Application (ABA) No.347/2021

Sk. Nayaj Sk. Jilani V State of Maharashtra

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.V. Gahlot, Adv for applicant.
 Shri I.J. Damle, APP for State.

CORAM : S.M. MODAK, J.
Reserved on : 13th JULY, 2021.
Pronounced on : 16th JULY, 2021.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard learned Advocate Shri Gahlot for all the applicants and learned APP Shri Damle for the State.

3. On the allegation that girl from Muslim community was kidnapped by a boy belonging to Koli community and on the allegation that shelter is given to them in the house of first informant- Pundlik Pandhari Tayde, an offence was registered. The incident of assault and beating took place on 18-05-2021 at about 7.30 pm at village Paldham Kothali, Taluka Motala, District Buldhana. The first informant Pundlik and his son Vitthal were assaulted. The Police of Borakhedi Police Station registered an offence against seven named accused persons. It was for the offences punishable under Sections 143, 147, 148, 149, 452, 365, 324, 504, 323 and 506 of the Indian Penal Code.

4. These applicants apprehend arrest and accordingly they have moved the Sessions Court, Akola. However, they were not successful. This Court has granted the interim

protection as per the order dated 10-06-2021 and 14-06-2021 respectively. There is a submission for confirmation of the ad-interim protection for the reason that the three applicants in Criminal Application (ABA) No.341/2021 were not named in the First Information Report (FIR) and single applicant in Criminal Application (ABA) No.347/2021 is not named specifically that is to say named but by different name viz; Sheikh Supada Sheikh Bilani. There is also a submission that there is no overt act against the applicant in Criminal Application (ABA) No.347/2021.

5. Wheres confirmation is opposed on behalf of the prosecution for the reason that benefit of some difference in the name of the applicant in Criminal Application (ABA) No.347/2021 cannot be granted now and three applicants in Criminal Application (ABA) No.341/2021 have been named in the statement of the witnesses (though not in the FIR).

6. I have perused the investigation papers made available. It is true that in the FIR lodged by Pundlik seven persons have been named. Accused no.6-Sk. Supada Sk. Bilani is a name similar to applicant Sk. Nayaj Sk. Jilani (in Criminal Application (ABA) No.347/2021). These seven accused persons attacked on the person of first informant and trace-passed his house. They were in search of Vitthal. Vitthal was forcibly taken towards S.T. Stand and he was beaten there.

7. After perusing the papers, I am not inclined to confirm the ad-interim protection to applicant Sk Nayaj Sk. Jilani in Criminal Application (ABA) No.347/2021. But I am inclined to confirm ad-interim protection granted to three applicants in Criminal Application (ABA) No.341/2021.

8. Accused Sk Supada Sk. Bilani has not only been named but overt act is attributed to him. He has assaulted Vitthal with the help of weapon fighter. He also helped in

dragging the victim towards the bust stop. There are statements to that effect. I am not naming them. Even in those statements somewhere the surname is given as 'Jilani' and whereas somewhere it is given as 'Bilani', there may be typing mistake also.

9. So far as other applicants are concerned, I do not find that some of the witnesses have named these three applicants, though these witnesses have not named all. When I have perused their statements, I do not find that the witnesses have stated about beating Vitthal with fist and blows and by stick by those applicants. The role of other accused is not specified. Already some of the accused persons named in the FIR have been arrested and interrogated.

10. If there are more persons in the assault, this Court understands that it is difficult to specify the role of the individual assailant. At the same time, it may also happen that while naming the true assailants, even the more names are added. Ultimately Court has to balance in between these two possibilities. After doing that exercise, Court feels that only the applicants in Criminal Application (ABA) No.341/2021 are entitled for confirmation. Hence, the following order is passed :-

ORDER

- (a) Criminal Application (ABA) No.347/2021 is rejected.
- (b) The order of granting ad-interim protection on 14-06-2021 passed in Criminal Application (ABA) No.347/2021 is vacated.
- (c) The order dated 10-06-2021 passed in Criminal Application (ABA) No.341/2021 is confirmed.
- (d) The applicants in Criminal Application (ABA) No.341/2021 are directed to attend the Borakhedi

Police Station on every Monday from 10.00 am to 12.00 noon for three months.

- (e) They are directed not to threaten the prosecution witnesses.
- (f) If any of the condition of this order is breached, the prosecution is at liberty to apply for cancellation of bail and it may be considered on merits.

11. Both the applications are disposed of.

12. As the main applications are disposed of finally, Criminal Application (APPP) Nos.872/2021 and 906/2021 have become infructuous. Hence, they are disposed of as infructuous.

JUDGE

Deshmukh