

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

CRIMINAL APPLICATION (ABA) NO. 536/2021

(Ganesh Pralhad Tale & ors. Vs. 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 A. R. Deshpande, Advocate for applicants.
Shri M. J. Khan, APP for non-applicant/State.
Shri A. M. Tirukh, Advocate for informant.

CORAM : VINAY JOSHI, J.
DATE : 07.09. 2021.

Heard.

2. In anticipation of arrest in Crime No. 247/2021 registered with the Police Station Channi Tahsil Patur, District Akola for the offence punishable under Sections 326, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, the applicant Nos. 1 to 5 are claiming for pre-arrest bail.

3. It is the prosecution case that at the instance of land dispute, the applicants assaulted informant Mahadeo and his son by means of axe,

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iron rod, bricks etc. causing them injuries of grievous nature. The learned counsel for the applicant would submit that at the time of occurrence, the informant's party has assaulted them. Applicant No. 1 Ganesh also lodged counter First Information Report (FIR) within few hours from the occurrence. He has produced medical papers to show that in the entire occurrence, applicant No. 1 Ganesh and applicant No. 3 Rahul sustained injuries. Precisely, it is the contention that it was free fight in which both sides got injured.

4. The State resisted bail by filing reply-affidavit. The informant's learned counsel also placed certain documents on record to resist the application. Medical papers are produced to show that informant's son Vishwanath took treatment at various places due to severe head injury. Besides head injury, some minor injuries like tenderness at shoulder were sustained by injured Vishwanath. Informant Mahadeo also sustained blunt injury in

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the occurrence.

5. *Prim facie*, it reveals that both parties got sustained injuries. It is the matter of trial to see as to who is aggressor. The report lodged by the informant which is prior in point of time assigns grave role to applicant No. 2 Bhagwanta who dealt axe blow at the head of Vishwanath. Corresponding statement of Vishwanath was also seen which equally says about the role of applicant No. 2 Bhagwanta. Having regard to the specific role of applicant No. 2 Bhagwanta coupled with the fracture injury at head, he is not entitled for pre-arrest protection.

6. The allegation against applicant No. 1 Ganesh is that he beat informant by bricks and also by means of iron rod. The report indicates that the entire incident occurred at the instance of applicant No. 1 Ganesh who started assault and called his fellow colleagues. Considering his role, custodial interrogation is necessary, hence he is

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not entitled for pre-arrest protection.

7. So far as rest of the applicant Nos. 3 to 5 are concerned, the role is about beating by means of iron rod. Careful examination of medical report shows that it does not specifically support the case of assault by several persons to Vishwanath by means of iron rod. Moreover, applicant No. 3 Rahul has sustained injury of grave nature at his hand. Considering the role assigned to the applicant Nos. 3 to 5, their liberty can be protected under certain conditions. In view of that following order:-

(I) Application stands partly allowed.

(II) Bail Application of applicant No.1 Ganesh Pralhad Tale and applicant No.2 Bhagwanta Pralhad Tale stands rejected.

(III) In the event of arrest of applicant No.3 Rahul Bhagwantrao Tale, applicant No. 4 Mahesh Bhagwanta Tale and applicant No. 5 Prashant Samadhan Tale, they be released on bail on their

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furnishing P.R. Bond of Rs. 25,000/- each with one surety in the like amount.

(IV) The applicant Nos. 3, 4 and 5 shall attend concerned Police Station on every Sunday in between 11.00 a.m. to 02.00 p.m. till filing of charge-sheet.

(V) The applicant Nos. 3, 4 and 5 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Gohane.