

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 ANTICIPATORY BAIL APPLICATION NO.15 OF 2022

- 1) MADHUKAR LIMBAJI GAIKWAD
- 2) VIJAYKUMAR KALAPPA PATWARI

VERSUS

THE STATE OF MAHARASHTRA

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Mr. G.L. Deshpande, Advocate for applicants

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 03rd MARCH, 2022

ORDER :

1 Applicant No.1 Madhukar Limbaji Gaikwad is apprehending his arrest in connection with Crime No.489/2021 dated 15.11.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860.

2 It will not be out of place to mention here that earlier during the pendency of this application the learned Advocate appearing for applicants had submitted that applicant No.1 Madhukar Limbaji Gaikwad expired. After

that statement was made by the Advocate, this Court had disposed of this application to the extent of applicant No.1 and granted this application as well as companion application in respect of applicant No.2 on 21.01.2022. Thereafter, after the order was taken by those persons as well as applicant No.1, they went to Police Station. Then, police informed about the said fact to the applicant No.1. He then contacted the Advocate and the entire confusion was solved. Thereafter, applicant No.1 filed Criminal Application No.436 of 2022 for restoring this application to the extent of applicant No.1 only and vide order dated 21.02.2022 passed by this Court, present application is restored.

3 Heard learned Advocate Mr. G.L. Deshpande for the applicant No.1 and learned APP Mr. A.M. Phule for the respondent.

4 The First Information Report has been lodged by one Harish Vitthal Pattewar, who has his ancestral land in Udgir. He states that he had visited the land on 13.11.2021 along with his cousin brother Aditya Madhukar Pattewar. He states that there was measurement carried out by the Government Officers on 11.11.2021 and 12.11.2021 of the land and they had gone to see the boundary marks on 13.11.2021 at about 4.30 p.m. At that time, accused Rajesh and Kanhaiyya went there and started disputing with them. It was told that they have purchased the said land and informant

and Aditya should not come there. Thereafter accused Rajesh had assaulted the informant by iron rod and the blow was received by the informant on his head. When Aditya went to rescue informant, he was obstructed by Kanhaiyya and was assaulted by stick on his leg. Thereafter, it is stated that Kanhaiyya had called his colleagues Suresh, Siddharth, present applicant No.1 Madhukar and Vijaykumar. All of them stated that the informant and Aditya should not come again and they were then assaulted by sticks and the iron rod, kicks and fist blows to informant and Aditya. They rescued themselves and went to Udgir Rural Police Station. They were then asked to take treatment and accordingly informant went to Udgir Hospital.

5 Learned Advocate appearing for the applicant No.1 submits that applicant No.1 is retired Surveyor from T.I.L.R. office and has been falsely implicated. He had no motive at all and concern with the land in question. In 7/12 extract pertaining to land Gat No.38/1 name of the Rajesh is to the extent of 1 H 98 R only. By virtue of an agreement to sell and thereafter a sale deed from one Sneha Dilip Bangale, whose name is also appearing in the 7/12 extract, Rajesh has purchased 60 R land for a consideration of Rs.45,00,000/-. There was no question of obstructing Rajesh. He also submits that the custody of the applicant No.1 is not required, in view of the contents of the FIR. Co-accused Siddharth and Vijaykumar are released on

anticipatory bail by this Court by order dated 21.01.2022.

6 Per contra, the learned APP strongly opposed the application. It was also submitted that though certain other accused persons have been arrested and released on anticipatory bail as well as recovery has been done, this applicant has also used the weapons and those weapons are required to be recovered.

7 At the outset, it is to be noted that from the application that was placed before the Additional Sessions Judge, contention was made that accused Kanhaiyya, Suresh and Vicky were arrested. They were sent to Police Custody and had recovered the iron rod and sticks from the spot. The question, therefore, is, whether they could have discovered the weapon used by the applicant No.1. An omnibus statement statement has been made that he has used sticks and iron rod to cause injuries to informant as well as Aditya. Why applicant No.1 should have a common intention with the other accused persons, is a question. When nothing has been stated about any relationship or motive, we cannot give much importance to the omnibus statement, at this stage and, therefore, case is made out to release applicant No.1 on pre-arrest bail. The interim protection deserves to be confirmed. Hence, following order.

ORDER

1 Application stands allowed in respect of applicant No.1.

2 The ad-interim protection, granted by this Court earlier to applicant No.1 vide order dated 10.01.2022, is hereby confirmed and made absolute. In other words, if the applicant No.1 is not formally arrested, in the event of arrest of the applicant No.1 **Madhukar Limbaji Gaikwad**, in connection with Crime No.489/2021 dated 15.11.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860, he be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicant No.1 shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.

4 He should cooperate with the investigation and shall attend the Udgir Rural Police Station, Dist. Latur, on every Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

(Smt. Vibha Kankanwadi, J.)