

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 ANTICIPATORY BAIL APPLICATION NO.1601 OF 2021
WITH
CRIMINAL APPLICATION NO.210 OF 2022

VANDANA W/O SAMRAT KAMBLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Mr. M.M. Parghane, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

Mr. G.B. Kingre, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st JANUARY, 2022.

ORDER :

1 Criminal Application No.210 of 2022 moved for assist to PP stands allowed and disposed of.

2 Applicants are apprehending their arrest in connection with Crime No.13/2021 dated 22.01.2021 registered with Basamba Police Station, Tq. & Dist. Hingoli, for the offence punishable under Section 307, 326, 324, 341, 143, 144, 146, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860

and under Section 4/25 of the Arms Act, 1959.

3 Heard learned Advocate Mr. M.M. Parghane for applicants and learned APP Mr. N.T. Bhagat, well assisted by learned Advocate Mr. G.B. Kingre, for the respondent/State.

4 It has been vehemently submitted on behalf of the applicants that the applicants are ladies and have been falsely involved. The First Information Report is as vague as possible to connect the applicants with the crime. Only omnibus statements have been made. No specific role is attributed to the applicants. At the most, it can be said that Section 326 of the Indian Penal Code has been made out but the Investigating Officer has exaggerated and altered the case under Section 307 of the Indian Penal Code. There is no injury on the vital part of the body. The accused who have attributed major role came to be arrested and released on regular bail. Recovery has been done from them. Under such circumstance, the physical custody of the applicants is not required. The charge sheet has also been filed after the completion of the investigation.

5 Per contra, the learned APP, well assisted by learned Advocate Mr. G.B. Kingre representing the informant, strongly opposed the application. Though the investigation is complete, it can be seen that the present

applicants are absconding since the date of the offence. Information has been lodged by one Pranjal Suresh Kamble. He alleged that when he was at home at about 6.30 p.m. on 17.01.2021 one Yashwant Khandare had come to his house and informed about the quarrel between Samrat Pandurang Kamble and the family with his father Suresh. Father of the informant is the brother of accused No.2. The informant went to the spot and found that his father had fallen in pool of blood and even the accused persons were present with weapons at the spot. He then lodged report about the incident on 22.01.2021. The medical report of the injured Suresh would show that he had received five injuries. Two of them were grievous with sharp as well as hard and blunt object. The other three injuries were simple in nature. Two of them could be possible by hard and blunt object, whereas one is by sharp weapon. The provisional medico legal report could say that there were fracture injuries to Suresh. Statement of Suresh would give the picture that accused No.2 and he got separated with mutual consent but not by metes and bounds. However, there are disputes between them in respect of the immovable property. On 17.01.2021 he had gone along with witness Yashwanta to purchase fish. He was obstructed by all the accused persons including the present applicant, who were armed with weapons. He states that accused Vandana had assaulted him on his right hand with axe. Accused Pooja, Ashwini and Shalini had assaulted him with stick on his head, chest

and back. So, specific role is attributed to the present applicants. His statement under Section 164 of the Code of Criminal Procedure has also been recorded. Statement of witness Yashwanta has also been recorded, who states that after Suresh was being assaulted by accused No.1 Bhimrao, he went away from that spot in fear and gave information about the incident to the son of injured. Therefore, taking into consideration the evidence that has been collected, this cannot be said to be a fit case where the applicants would get benefit of Section 438 of the Code of Criminal Procedure, on the ground that they are ladies.

6 The prosecution case as well as major evidence that has been collected has already been stated and, therefore, it is not reproduced. No doubt, in this case the investigation is over, in a sense that the charge sheet has been filed, however, it is to be noted that the present applicants have been shown as absconding. The applicants have not stated in their application, as to where they were since the date of the incident. The injuries, which have been sustained by Suresh are in the nature of grievous as well as simple. There are recitals to show that one of the applicants had tried to assault him on his head with stick, which is vital part of the body. Specific allegation has been made that three of the applicants have assaulted injured with sticks and one has used axe. Under such circumstance, they cannot seek

benefit or concession on the ground that they are ladies. The weapon allegedly used by these applicants is definitely required to be seized. Taking into consideration nature of the injuries, the allegations about offence, specific role attributed to the applicants, this cannot be the case where the extraordinary powers of this Court under Section 438 of the Code of Criminal Procedure can be used. At the costs of repetition, it can be said that the applicants are stated to be absconding. Therefore, in view of the decision in **Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730**, wherein Hon'ble Supreme Court says that concession cannot be given to the accused who is absconding, application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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