

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 ANTICIPATORY BAIL APPLICATION NO.164 OF 2022

1. Shalubai Rajaram Chavan
 2. Renuka Sanjay Chavan
- ... Applicants

Versus

The State of Maharashtra

... Respondent

...

WITH

APPLN/597/2022 IN ABA/164/2022

...

Advocate for Applicants : Mr. Sabnis Ameya N

APP for Respondent – State : Mr. B. V. Virdhe

Advocate for applicant – original informant in APPLN/597/2022 : Mr. S.
S. Panale

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28.02.2022

PER COURT :

1. Criminal Application No.597 of 2022 filed by the original informant seeking permission to assist learned APP stands allowed and disposed of.

2. Applicants are apprehending their arrest in connection with Crime No.10 of 2021 registered with Udgir Rural Police Station, Dist. Latur for the offences punishable under Sections 307, 452, 324, 336, 427, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code.

3. Heard learned Advocate Mr. Ameya N. Sabnis for the applicant and learned APP Mr. B. V. Virdhe well assisted by learned Advocate Mr. S. S. Panale for the original informant.

4. It has been vehemently submitted on behalf of the applicants that the charge-sheet is now filed and the investigation is over. Perusal of the FIR would show that the role attributed to the present applicants is that they had assaulted sisters of the informant by sticks. The medical papers of these two sisters would show that they have received simple injuries and, therefore, at the most, the offence that would be attracted against them is either under Section 324 or Section 323 of Indian Penal Code. The applicants are ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly opposed the application with able assistance of learned Advocate Mr. S. S. Panale for the informant. It has been submitted that all the accused had formed unlawful assembly and in pursuant to their common object they had assaulted the informant and other witnesses. Therefore, though individually, they might have given simple injuries to the sisters of the informant, yet the acts done by the other members of the unlawful assembly are also required to be considered. It is also to be noted that all the accused persons had barged into the house of the informant and they were

armed with stones, stick, knife, pipes and swords. Co-accused had assaulted nephew of the informant by sword and sister-in-law, who had sustained injuries to their head. The mother of the informant had received injuries due to the iron rod. So also, the father of the informant has also received those injuries with the rod. Brother of the informant had received injury due to knife. Further, the present applicants were absconding and, therefore, charge-sheet came to be filed under Section 299 of the Code of Criminal Procedure. The custodial interrogation of the applicants is required to recover the sticks they had used. Taking into consideration the manner in which the offence was committed would dis-entitle the applicants from getting discretionary relief for anticipatory bail.

6. Before turning to the merits, it is to be noted that the applicants had approached this Court by way of filing ABA No.183 of 2021. That application was withdrawn on 07.04.2021, which was before filing of charge-sheet. Now, it appears that on 23.06.2021, charge-sheet is filed and, therefore, when the charge-sheet contains that the present applicants were not available for the investigation, then the charge-sheet would be filed against them after their arrest. No Section has been mentioned as to under which provisions, the charge-sheet came to be filed against them. So also, in spite of giving opportunity to the

prosecution to get an explanation from the investigating officer as to what efforts were made by him to arrest the accused, as no document regarding the attempts (if any) were made, yet the learned APP submits that though he had given specific instructions, the Investigating Officer did not report to him. Mere statement that the investigating officer could not find the accused and charge-sheet will be filed against them after their arrest will not suffice. When investigation, in all, has been done as against present applicants also and its outcome is the charge-sheet under Section 173 of the Code of Criminal Procedure, it cannot be segregated by saying that it is against those persons, who have been arrested only. The scope of further investigation as contemplated under Section 173(8) of the Code of Criminal Procedure is different. Therefore, the fact will have to be considered that in spite of opportunity given to the investigating officer, he has not produced on record any document to show what efforts he had made to nab the present applicants. He could have definitely taken steps under Section 82 of the Code of Criminal Procedure. Note can be taken of the guidelines given in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another***, Special Leave to Appeal (Crl.) No.5191 of 2021 (arising out of impugned final judgment and order dated 01.07.2021 in CRMABA No.7598 of 2021 passed by the High Court of Judicature at Allahabad),

wherein the Apex Court on 07.10.2021 categorized the offences and the guidelines were given. Taking into consideration the Sections involved in the present case, the present case would fall under category (B) i.e. for the offences punishable with death, imprisonment for life, or imprisonment for more than 7 years. The requisite conditions stated are, not arrested during investigation and cooperated throughout in the investigation including appearing before investigating officer whenever called. For category (B), it is stated, on appearance of the accused in Court pursuant to process issued bail application to be decided on merits. Therefore, the requisite condition will have to be considered along with the guidelines for category (B). In this case, when present applicants were not arrested at all during the course of the investigation yet charge-sheet came to be filed and, there is nothing in the charge-sheet to suggest that the investigation could not take place/completed in absence of the accused, then it will have to be considered that the physical custody of the applicants is not required for the purpose of investigation.

7. Taking into consideration the contents of the FIR and the statement of witnesses, the role attributed to the applicants is assault by sticks to the sisters of the informant. Sister Munnabai has received three injuries, which are simple in nature. So also, sister Shalubai has received

one injury i.e. abrasion over left shoulder. It is simple in nature. Taking into consideration this aspect, the applicants deserve to be released on bail. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) In the event of arrest of applicants viz. (i) Shalubai Rajaram Chavan and (ii) Renuka Sanjay Chavan in connection with Crime No.10 of 2021 registered with Udgir Rural Police Station, Dist. Latur for the offences punishable under Sections 307, 452, 324, 336, 427, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code, they be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicants shall not tamper with the evidence of the prosecution in any manner.
- IV) They shall not indulge in any criminal activity.
- V) If at all the Investigating Officer intends to take up steps under Section 173(8) of the Code of Criminal Procedure, then the applicants to cooperate with the investigation.

[SMT. VIBHA KANKANWADI, J.]