

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.173 OF 2022

MANOHAR S/O CHIMAJI CHALAK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicants : Mr. C. V. Thombre
APP for Respondent-State : Mr. B. V. Virdhe
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
23-03-2022**

**Date of Pronouncing The Order :
27-04-2022**

ORDER :

1. Both the applicants are apprehending their arrest in connection with Crime No.558 of 2021, registered at Georai Police Station, District Beed, for the offence punishable under Sections 385, 386, 327, 427, 504, 143, 147, 149 of IPC.
2. Heard learned Advocate Mr. C. V. Thombre for applicants and learned APP Mr. B. V. Virdhe for respondent-State.
3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. No specific

allegations have been made against the applicants, and therefore, the offences are not attracted against them. In fact, the FIR was lodged by one Bharat Kachru Soundarmal against the informant Kalyan Jadhav at about 02.52 hours on 04.12.2021 vide Crime No.556 of 2021 with the same police station for the offence punishable under Section 307, 323, 504, 506 of IPC and Section 3(1)(r), 3(1)(s), 3(2) and 3(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In order to give a counterblast to the said FIR, this FIR was lodged at about 23.21 hours of 04.12.2021. In fact, the applicants are the owners and the possessors of a plot at Shastri Chowk, Georai. The informant has unauthorizedly and by making encroachment, carrying hotel on the said plot. The applicants had entered into an agreement with accused No.4 Bharat Kachru Soundarmal, and therefore, the applicants had asked the informant to vacate the plot. Instead of vacating the plot, he had attacked the applicants by knife and also abused accused No.4 in the name of his caste. When nothing is required to be seized from the custody of the applicants, they deserve to be released on bail. This Court had granted interim protection to the applicants on 08-03-2022 and they have not misused the said liberty. Under such circumstances, the said interim

order deserves to be confirmed.

4. Per contra, the learned APP has strongly opposed the application and submitted that the applicants had demanded ransom for the plot which is in possession of the informant. There is dispute between applicant No.1 and the informant in respect of the said plot, and in order to evict him, the applicants had formed unlawful assembly and assaulted him. Amount of Rs.10,000/- to 12,000/- from the collection of the hotel were forcibly taken away. That amount is yet to be recovered. The applicants are absconding, and therefore, possibility of commission of similar crime after their release cannot be ruled out. The custodial interrogation is necessary.

5. At the outset, it is to be noted that even the prosecution is accepting that there is dispute about the plot which is now alleged to be in possession of the informant. In order to show that the said plot was allotted to the applicants, the applicants have produced on record the resolutions passed by the revenue authorities at Georai. It shows that to the applicant an area of 12 feet x 20 feet which itself is stated to be an encroachment by applicant No.1 for the hotel appears to have been regularized by accepting them as tenant.

Inquiry was also made by the Circle Officer and it appears that he had concluded that since last more than 25 years the applicant and other persons had made encroachment and have started different shops at the spot. The demand bills in respect of taxes have also been produced. The Shop Act Licence for one Shivneri Tea Stall appears to have been issued in the year 1989 in favour of applicant and it appears that it has been got renewed from time to time. A complaint is stated to have been made by the applicants to the Collector Office regarding taking action about the encroachment, and accordingly the Assistant Commissioner, Sub-Divisional Office, Aurangabad, has given directions for the inquiry. It can also be seen that the FIR lodged by said Bharat Soundarmal is prior in time which is against the informant and in this complaint, which is presently under consideration, also that Bharat Kachrumal Soundarmal has been made as accused No.4. Therefore, there is substance in the say that the present FIR appears to be a counterblast. The informant is stating that he is running the said hotel since last about 10 years along with his brother and prior to that his father was conducting, however, he has not stated as to how his father was got inducted in the said premises. We are more concern with whether any such incident as alleged in the FIR has taken place. The Medico

Legal Certificate shows that the informant has received two simple injuries. If the informant was assaulted by so many persons who had formed unlawful assembly, then there would not have been only two simple injuries. The informant appears to be himself encroached on the land. The circumstances prima facie showing that the FIR appears to be the counterblast, then the rights of the applicants deserve to be protected. The interim protection granted earlier to applicant No.1 deserves to be confirmed, accordingly it is confirmed, and applicant No.2 deserves to be released on anticipatory bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The interim protection granted by this Court on 08-03-2022 by this Court to applicant No.1- Manohar s/o Chimaji Chalak is hereby confirmed. In other words, in the event of arrest of the applicant No.1-Manohar s/o Chimaji Chalak, in connection with Crime No.558 of 2021, registered with Georai Police Station, District Beed, for the offence punishable under Sections 385, 386, 327, 427, 504, 143, 147, 149 of IPC, he be released on P.R.Bond of Rs.30,000/- with two solvent

sureties of Rs.15,000/- each.

- 3) In the event of arrest of applicant No.2- Karan s/o Shivaji Chalak, in connection with Crime No.558 of 2021, registered with Georai Police Station, District Beed, for the offence punishable under Sections 385, 386, 327, 427, 504, 143, 147, 149 of IPC, he be released on P.R.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- 4) Applicants No.1 and 2 shall not tamper with the evidence of prosecution in any manner.
- 5) Both the applicants shall remain present before the Investigating Officer on every Thursday between 10.00 a.m. to 02.00 p.m. till further orders.
- 6) They shall not indulge in any criminal activity.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.