

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

ANTICIPATORY BAIL APPLICATION NO.187 OF 2022

- 1) Sunil S/o Shankar Rathod,
- 2) Dr. Dilip Laxman Chavan,
- 3) Bebabai W/o Dattarao Rathod,
- 4) Janabai W/o Dharma Rathod,
- 5) Shyamrao S/o Rupla Jadhav

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.A.S. Barlota Advocate h/f. Mr. V.A. Bagadiya Advocate for
Applicants.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 8th APRIL, 2022

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.15 of 2021 registered with Aundha Nagnath Police Station, District-Hingoli for the offences punishable under

Sections 143, 147, 148, 149, 353, 332, 341 of the Indian Penal Code and Section 130 (1) (2) (3) of the Representation of the People Act.

2. Heard learned Advocate for the applicants and learned APP for the respondent – State. In order to cut short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. Perusal of the First Information Report would show that it is lodged by one Police Sub Inspector attached to Aundha Nagnath Police Station, District-Hingoli. It appears that there was election at Pazar Tanda and after the Zonal Officer at the polling booth gave call to the informant, he went along with other police persons. They found several persons coming inside the 100 meter area of the booth and therefore, they were asked to go out of that area, still two persons remained there, namely, Balu Dattarao Rathod and Dharma Shankar Rathod. They were giving indications to the voters as to how they should cast their vote. When Police Inspector Mr. Munde was asking them to go out of that area, those persons started raising chaos. When Dharma Shankar Rathod was being made to sit in the police vehicle, he had assaulted police head constable Mr. Thite.

Thereafter, certain other persons came and took Dharma Rathod from the custody of police, however, Balu Rathod was still in custody of the police. He disclosed the name of the other persons including the names of the present applicants.

4. It can be seen that even the investigation is over and charge-sheet has been filed. Of course, it has been stated in the First Information Report that the charge-sheet is filed under Section 299 of the Code of Criminal Procedure against the present applicants. Therefore, learned APP, by taking strong objections, submits that the charge-sheet is filed and it is clearly stated in the charge-sheet that the present applicants were absconding and could not be traced when twice the attempt was made. The medico legal certificate of one of the police constables on duty, would show that he had received two simple injuries. Learned APP further submits that the allegations in the First Information Report would clearly show that when the police had taken custody of a person and made him to sit in the police vehicle as they were creating unrest at the election booth, that person was brought down by the accused persons by resisting the police, and therefore, obstruction as well as criminal force was applied against the police on duty. The offence alleged is serious.

5. The charge-sheet would show that on 30th January 2021 and 11th February 2021 Police Inspector had directed the police persons to take search of the applicants and bring them to Police Station. Those police persons have given report on 31st January 2021 and 12th February 2021 that though they had searched for the applicants, they were not found. The charge-sheet definitely does not show that recourse was taken to Sections 82 and 83 of the Code of Criminal Procedure. Unless that procedure is taken up, it cannot be said that the accused persons are the proclaimed offenders. The Investigating Officer is not giving any kind of explanation, as to why he has not resorted to that procedure, which is the only available procedure. Section 299 of the Code of Criminal Procedure only enables the Magistrate to record the evidence in absence of an accused who is absconding. But Section 299 of the Code of Criminal Procedure cannot be read in isolation and it has to be read along with Sections 82 and 83 of the Code of Criminal Procedure, the procedure under which is supposed to be taken prior in time.

6. Further, taking into consideration the role attributed to the applicants that they were part of the mob and no overt act is attributed to them, the interim protection granted to them

deserves to be confirmed. However, at the same time it can also be said that when such activity was going on, the applicants cannot be the part of the mob also and ought to have stayed away from the actions done by either their leader or co-accused. Now, in the alternative, the learned Advocate for the applicants has stated that the applicants are repenting for their acts and they are ready to show their *bona fides* by depositing certain amount to any institution. Under such circumstance, the interim relief granted to the applicant can be confirmed. Hence the following order:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicants by this Court by order dated 22nd February 2022 stands confirmed. It is thus clarified that in the event of arrest of applicant No.1 - Sunil S/o Shankar Rathod, applicant No.2 - Dr. Dilip Laxman Chavan, applicant No.3 - Bebabai W/o Dattarao Rathod, applicant No.4 - Janabai W/o Dharma Rathod and applicant No.5 - Shyamrao S/o Rupla Jadhav, in connection with Crime No.15 of 2021 registered with Aundha Nagnath Police Station, District-Hingoli for the

offences punishable under Sections 143, 147, 148, 149, 353, 332, 341 of the Indian Penal Code and Section 130 (1) (2) (3) of the Representation of the People Act, they be released on bail on PR Bond Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Fifty Thousand) each, if already not released.

iii) The applicants shall deposit an amount of Rs.5,000/- (Rupees Five Thousand) each to the High Court Legal Services Sub Committee, Aurangabad on or before 13th April 2022.

iv) The applicants shall co-operate with the investigation.

v) The applicants shall not tamper with the evidence of the prosecution, in any manner.

[SMT. VIBHA KANKANWADI , J.]