

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.264 OF 2022

1. Vitthal s/o Velhuji Markad
2. Popat s/o Vitthal Markad
3. Dnyaneshwar s/o Vitthal Markad ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. N. B. Narwade, Advocate for applicants.

Mr. A. M. Phule, Advocate for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 28.03.2022

Pronounced on : 12.04.2022

ORDER :-

1. The applicants are apprehending their arrest in connection with Crime No.784 of 2021 registered with Pathardi Police Station, Dist. Ahmednagar for the offences punishable under Sections 326, 307, 324, 143, 147, 148, 149, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Mr. N. B. Narwade for the applicants and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated and the FIR is nothing but

the counterblast to the FIR lodged by Subhash Vitthal Markad against the informant. Role assigned to the applicants - Vitthal, Popat and Dnyaneshwar is that they had abused the informant and assaulted him by kicks and fists blows. It is stated that it was on the ground that Vitthal had asked the informant as to when he has stolen the fruits. Further, it is to be noted that Vitthal and Popat have assaulted the informant by sticks and Dnyaneshwar assaulted by iron rod. In fact, no such incident has taken place. The false implication is because of father of Vitthal had purchased the land from Govind Markad i.e. the father of the informant. However, now Vitthal has developed the land and is earning a good amount and due to jealousy, such theory has been concocted. The applicants are ready to abide by the terms of the bail.

4. Learned APP strongly opposes the application and submitted that in all five persons received injuries in the incident. Subhash Vitthal Markad was arrested and he has made discovery, however, the main allegations is against the present applicants, who had used iron rod and wooden stick. The informant and accused are residing in the same village and their lands are adjacent to each other. Therefore, if the applicants are released on bail, again the law and order problem would crop-up and, therefore, discretionary relief should not be granted in favour of the applicants.

5. It is to be noted that Shivaji Markad has lodged the report on 19.10.2021 in respect of the incident alleged to have taken place on the same day at about 8.30 a.m. According to the informant he has agricultural land in Gut No.200. In the same gut number, there is land of Vitthal Velhuji Markad i.e. applicant No.1 and he says that there is common Well in the land of Vitthal. Informant has taken pomegranate crop and prior to the FIR, few days earlier, their pomegranates were stolen, however, they had not made any inquiry. When informant, his son-in-law and daughter had gone to see the trees at about 7.00 p.m. on 18.10.2021, they saw one Subhash Vitthal Markad and Tukaram Velhuji Markad stealing pomegranates. When they were asked by the daughter and son-in-law as to why they were stealing the fruits, they abused them and went away. Informant has stated that he had given the said land to his son-in-law for cultivation. Thereafter, at about 8.00 a.m. on 19.10.2021, the informant, his wife, daughter, son-in-law, another daughter and another son-in-law went to the field to take pomegranates, but at about 8.30 p.m. all the accused persons came, who were armed with sticks, iron rod and axe. Applicant No.1 started asking them as to when they had stolen their pomegranates. The son-in-law told them that yesterday evening that incident has happened. Then accused - Subhash got annoyed and started saying that he is unnecessarily

blaming him and then assaulted son-in-law of the informant with axe. When informant went ahead, he was assaulted by applicant No.3 by iron rod on his left hand. When informant's wife and daughters were trying to rescue, at that time, applicant Nos.1 and 2 had assaulted them by wooden sticks/logs. All the accused persons are then left. The son-in-law Devidas had sustained severe injuries. He was taken to Shree Hospital, Tisgaon.

6. The police papers, as they are supplied, also show that as against applicant Nos.1 and 2 are concerned, there is statement of the daughter of informant that she as well as sister - Ashabai were trying to rescue along with their mother, at that time, applicant Nos.1 and 2 had assaulted them by sticks. It appears that their injury certificates have not even been collected. So, it will have to be taken as simple injury. From the FIR and the statement of the daughter i.e. the only statement that is recorded uptill now and supplied in the police papers show that Devidas only had received serious injuries, but the injury certificate issued by Shree Hospital, Tisgaon would show that he had received two injuries. One is head injury with CLW on the scalp region frontal vertex region and another was blunt trauma at four places. The probable weapon for the first injury is stated as axe, but the nature of the injury is stated to be simple. Second injury is also simple. Therefore, whether

Sections 326 or 327 of Indian Penal Code would be attracted itself is a question and, therefore, the applicants deserve to be protected under Section 438 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Application is hereby allowed.
- II) In the event of arrest of applicants, viz., (i) Vitthal s/o Velhuji Markad, (ii) Popat s/o Vitthal Markad and (iii) Dnyaneshwar s/o Vitthal Markad in connection with Crime No.784 of 2021 registered with Pathardi Police Station, Dist. Ahmednagar for the offences punishable under Sections 326, 307, 324, 143, 147, 148, 149, 504, 506 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 remain present before the Investigating Officer on every Friday and Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet and cooperate with the investigation.
- IV) They shall not tamper with the evidence of the prosecution in any manner.
- V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]