

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 ANTICIPATORY BAIL APPLICATION NO.328 OF 2022

SUNIL VISHWAS HIWALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Bhosle Pratik A
APP for Respondent-State : Mr. A. M. Phule
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-04-2022

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.47 of 2022, registered with Tembhurni Police Station, District Jalna, for the offence punishable under Section 307, 326, 324, 143, 147, 148, 149, 504, 506 of Indian Penal Code.
2. Heard learned Advocate Mr. P. A. Bhosle for applicants and learned APP Mr. A. M. Phule for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.
3. It will not be out of place to mention here itself that when the matter was on board on 23-03-2022, no interim relief was granted to applicants No.3 and 4. There are specific allegations against them and

those allegations that the applicant No.4 had pressed the neck of informant and applicant No.3 who had initially assaulted the informant by stick on his left hand, instigated the other accused by saying that informant will not die by throttling and he should be assaulted by stick, they do not deserve discretionary extraordinary relief under Section 438 of Cr.P.C., and therefore, their application deserves to be rejected.

4. As regards applicants No.1, 2, 5, 6 and 7 are concerned, interim protection was granted.

5. The FIR has been lodged by one Dnyaneshwar Uttamrao Hiwale on 18-02-2022 in respect of an incident dated 11-02-2022. Therefore, there appears to be apparent delay in lodging the FIR. We are mainly concerned with the role attributed to those applicants No.1, 2, 5, 6 and 7. It is stated that by catching hold of the informant, assaulting him on left hand by stick and assault by sickle, it has caused only scratches on the back of the informant. The injury certificate issued by Astha Hospital and ICU Concern Care and Cure, Jalna, would show that he had sustained two injuries, one is abrasion plus contusion over left elbow joint, and the second is, dislocation of left elbow joint, for which closed reduction was done,

and therefore, it has been stated to be the grievous injury. Certainly, the present applicants appear to be not the author of the said injury. Statements of witnesses have been recorded. Witness Kantabai Gulabrao Gophane states that one Uttam Hiwale had assaulted cousin brother of the informant Krushna with stick on his head. In fact, she has not stated about the assault on the informant, but then she states that there was dispute between all these persons and Dnyaneshwar fell in the drainage near boundary of her land. Same is the case with witness Mankarnika Gophane, Gopinath Gophane, Sarangdhar Dethe. Another witness Sagar Barwal appears to have stated about the assault, but he was not having knowledge about the names of the injured persons and the assailants. Witness Avachitrao Shinde, Vishal Gulab Gophane are on the same line. Statement of wife of the informant has been recorded under Section 161 of Cr.P.C. as well as Section 164 of Cr.P.C. and then she is supporting the informant. She has stated that applicant No.4 Krushna had assaulted informant Dnyaneshwar by axe on his head, as a result of which, Dnyaneshwar fell down. She then states that applicant No.7, 6 and 5 had brought sickle and assaulted on the back of her husband. But, as aforesaid the injury certificate is not supporting her statement. Statement of

Sarangdhar Dethe under Section 164 of Cr.P.C. rather gives a impression that Uttam Hiwale, who might be from the side of informant, had assaulted applicant No.4 with stick and the other witnesses earlier referred have also stated the same thing in their statement under Section 164 of Cr.P.C. The counter FIR has also been filed vide Crime No.44 of 2022 with the same police station which is prior in time i.e. on 13-02-2022 itself under Section 307, 143, 147, 148, 149, 323, 324, 504 of IPC. Therefore, taking into consideration all these aspects as regards applicants No.1, 2, 5, 6 and 7 deserve continuation of the interim relief granted by this Court on 23-03-2022, accordingly it is confirmed. Hence, following order.

ORDER

- 1) Application of applicants No.3 and 4 stand rejected.
- 2) Application of applicants No.1, 2, 5, 6, and 7 stand allowed.
- 3) The interim protection granted by this Court on 23-03-2022 to applicants No.1, 2, 5, 6 and 7 is hereby confirmed. In other words, in the event of arrest of the applicant No.1- Sunil s/o Vishwas Hiwale, applicant No.2- Vishwas s/o Gangaram Hiwale, applicant No.5- Puja w/o

Shivaji Hiwale, applicant No.6- Sulabhabai w/o Santosh Hiwale and applicant No.7 Manisha w/o Krushna Hiwale, in connection with Crime No.47 of 2022, registered with Tembhurni Police Station, District Jalna, for the offence punishable under Sections 307, 326, 324, 143, 147, 148, 149, 323, 504, 506 of IPC, they be released on P.R.Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

4) Applicants No.1 and 2 shall remain present before the Investigating Officer on every Monday and Thursday between 10.00 a.m. to 12.00 noon till further orders and co-operate with the investigation.

5) Applicants shall not tamper with the evidence of the prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.