

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

**ANTICIPATORY BAIL APPLICATION NO.333 OF 2022
WITH
CRIMINAL APPLICATION NO.1117 OF 2022
IN ABA/333/2022**

1. Rajkumar S/o. Madhavrao Pinate
2. Sanjay S/o. Madhavrao Pinate
3. Uddhav S/o. Madhavrao Pinate ..Applicants

VERSUS

- . The State of Maharashtra ..Respondent

Advocate for Applicants : Mr.P.R.Katneshwarkar h/f.
Mr. Hanmant V. Patil

APP for Respondent : Mr.V.M.Kagne
Advocate for Informant : Mr.S.S.Panale

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 12th April, 2022

ORDER :-

1. The applicants are apprehending their arrest in connection with Crime No.0069 of 2022, registered with Gandhi Chowk Police Station, Latur, Dist.Latur, for the offence punishable under Sections 143, 147, 149, 120-B, 323, 504, 395, 447 of the Indian Penal Code (IPC).

2. Heard Mr. P.R.Katneshwarkar, learned Advocate holding for Mr. H.V.Patil, learned Advocate for the applicants, Mr.V.M.Kagne, learned APP for the respondent-State and Mr.S.S.Panale, learned Advocate for the informant.

3. It has been vehemently submitted on behalf of the applicants that the informant is their cousin brother and number of civil disputes are going on between the two families. The First Information Report (FIR) relates to Survey No.149/B/2 situated at Latur. It is the case of the informant that there was already partition in the year 1984 between the families, however, it was denied by the present applicants and they have filed Special Civil Suit No.50 of 2012 before the Civil Judge, Senior Division, Latur for partition and separate possession and it is still pending. The revenue entries were taken on the basis of alleged partition and the applicants say that the applicants, their mother and their sister are owner of 17R land out of the said Survey Number. They have filed proposal for sanction of layout of the said partition of the said land and after following due procedure of law it was sanctioned on 2nd November, 2022 by the Municipal Corporation. Accordingly, that plot is being developed by them. It is then stated that in view of the acquisition of their land at some other place, Land References are pending and there is

dispute in that respect between the applicants and the informant. With this background the FIR is required to be considered. No such incriminating circumstance or evidence is against the present applicants and it appears that the applicants have been falsely implicated. The FIR states that about 15 to 20 persons came to the spot and it is stated that they had broken the locks of the shops of the tenants of the informant and they were stealing away all the material of those tenants to the extend of Rs.8,00,000/- to Rs.10,00,000/-. Infact no such incident has taken place at the instance of present applicants. Applicants have nothing to do with those 15 to 20 persons. Applicants were not present at the spot when the alleged incident took place. Their names are taken by the person who has allegedly broken the locks. Only on the basis of that statement, applicants cannot be arrested. Applicants are ready to abide by terms of bail.

4. Per contra, learned APP for the respondent well assisted by Mr.S.S.Panale, learned Advocate for the informant submitted that there is dispute between the informant and the applicants in respect of the property but that does not mean that the applicants should disturb the possession of the tenants who were inducted by the informant in various shops. They were

possessing the shops since many years and at no point of time objection was raised by the applicants. The statement of the person, who was present at the spot indicates that there is communication between the applicants with those accused persons. Further that communication can be highlighted with the call records and the locations of the applicants. The applicants were sitting in one room and from there they were contacting those accused persons who were at the field. Those call details have been collected. Therefore, the physical custody of the applicants is required and the manner in which the offence is committed, the applicants do not deserve to be released on bail.

5. The applicants as well as the original informant have produced documents on record. The Investigating Officer has also produced on record the documents in respect of the dispute between two families. It appears that the said dispute is going on since many years. We are concerned with the incident alleged in the FIR. There is no delay in lodging the FIR and in the FIR it is stated that the informant received a phone call at 03:00 a.m. from one Nisar Sayyad (Bablu) who had witnessed that 15 to 20 persons alongwith Truck and Tempo had gone to the property which the informant is claiming to be his own. At present the applicants have not claimed their ownership over

those 12 shop premises. Copies of the rent agreements entered between those persons and the informant have been produced on record. Though they appear to be of 21st January, 2022, it has been stated by the informant that those premises were given on rent by him much prior to that date. It can be seen that when the material was being loaded in the Truck, the said fact was informed to the Police and Police went to that spot. Photographs have been taken at the time of seizure of those articles. It is certain that present applicants were not at the spot when the alleged incident took place, however, the evidence that has been collected against them up to the date is in the nature of call records. If they are getting the act done through other persons, then definitely this cannot be a fit case where they should be protected. In all five persons have been arrested in connection with the crime and it can be seen that they have nothing to do with the property or even they are not the history-sheeters as thieves. Their call records in which the phone numbers of the applicants are reflected and from that the CDR of the applicants have been collected showing the contact and it is of that time only. Therefore, when *prima-facie* involvement is shown, there is no question of grant of discretionary relief to the applicants. Hence, Anticipatory Bail Application is rejected.

6. Criminal Application filed for assist to APP is allowed and disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT