

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

**928 ANTICIPATORY BAIL APPLICATION NO.370 OF 2022
WITH APPLN/1148/2022 IN ABA/370/2022**

- 1) Laxman Anna Dhotre
Aged: 68 years, Occu.: Nil.
- 2) Meenabai Laxman Dhotre
Age: 64 yrs., Occu.: Household.
- 3) Hiralal Pandurang Jadhav
Age: 43 yrs., Occu.: Service.
- 4) Yash Dhanraj Dhotre
Age: 19 yrs., Occu.: Student.
- 5) Rahul Sonyabapu Dhotre
Age: 20 yrs., Occu.: Student.
- 6) Amol Hiralal Jadhav
Age: 21 yrs., Occu.: Student.
- 7) Kachru Kalu Manjre
Age: 65 yrs., Occu.: Service.
- 8) Savita Sunil Pawar
Age: 38 yrs., Occu.: Household ..Applicants

VERSUS

- . The State of Maharashtra
Through the Police Station Officer,
Ahmednagar Camp Police Station,
Ahmednagar. ..Respondent

...
Advocate for Applicants : Mr. Mohasin Latif Khan Pathan
APP for Respondent : Mr.B.V.Virdhe
Advocate for Informant : Mr.S.S.Shinde
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 19th April, 2022

ORDER :-

1. The applicants are apprehending their arrest in connection with Crime No.0031 of 2022, registered with Ahmednagar Camp Police Station, District Ahmednagar, for the offence punishable under Sections 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code (IPC).
2. Heard Mr.Mohasin Latif Khan Pathan, learned Advocate for the applicants, Mr.B.V.Virdhe, learned APP for the respondent and Mr.S.S.Shinde, learned Advocate for the informant.
3. It has been vehemently submitted on behalf of the applicants that the perusal of the FIR would show that it has been alleged against 13 persons and as far as the present applicants are concerned, the role attributed is pelting of stones. It is stated that co-accused Jagannath has assaulted informant's brother with iron rod on his right hand whereas co-accused Bharat Laxman Dhotre had caused injury to the forehead/head of the informant by scythe. Co-accused Jagannath and Bharat are not before this Court. The applicants were granted interim protection by order dated 29th March, 2022 and they are abiding by the terms. The said order needs to be confirmed.

4. The learned APP for the respondent-State well assisted by Mr.S.S.Shinde, learned Advocate for the informant submit that the offence that has been committed by the accused persons is serious in nature. Scythe as well as iron rod are yet to be recovered. Though the present applicants remained present before the Police Station, however, they have not co-operated with the investigation. The informant as well as accused are relatives and if the applicants are released on bail, there would be law and order situation. Statements of witnesses have been recorded who have stated in support of the FIR. Statement of independent witness - Suresh Narayan Ambekar, who was the former Corporator has also been recorded. He had taken part in settling the dispute. The injury certificate has been collected. Informant Dilip Nana Fulari has received grievous hurt to left fronto-temporal region. Opinion of the Doctor has been sought in respect of the injury sustained by Dilip Nana Fulari and in his opinion dated 16th February, 2022, he has stated that there was no skull fracture to the informant, however, whatever the injury was, could have been possible by scythe and the injury was fatal. The other injuries could have been possible by hard and blunt object. It has been further submitted that after lodging of the FIR, a non-cognizable offence has been registered by Santosh Nana Fulari on 16th April, 2022 and it is against Laxman Anna

Dhotre and it is stated that he had threatened him that he should take back the FIR. Under such circumstance, when applicant No.1, even appears to be acting for others, has not been stopped his criminal activity. Therefore, the applicants do not deserve continuation of the interim relief.

5. At the outset, it is to be noted that when the FIR was lodged at 19:45 hours on 17th January, 2022, Section 307 of the IPC was not added, however, later on there is addition of Section 307 and it appears to be after taking into consideration medical certificate of the injured.

6. Perusal of the First Information Report lodged by Dilip Nana Fulari on 17th January 2022 around 19:44 hours would show that it is in respect of the alleged incident that had taken place at about 2:00 p.m. on the same day i.e. 17th January, 2022. It also appears that there is matrimonial dispute between the sister of the informant and accused No.1 - Bharat Laxman Dhotre, who appears to be the son of present applicant Nos.1 and 2. It appears that Bharat was seeking divorce from the sister of the informant. Informant states that at about 2:00 p.m. all the accused persons came to his house and Bharat Laxman Dhotre, who is not present before this Court, started disputing with his

wife and stated that she should give divorce to him and also handover the custody of their children. When informant resisted by saying that they will not allow the custody of the children to be taken by Bharat and he can approach the Court for divorce; Bharat got annoyed and started assaulting his wife. Informant and other family members tried to obstruct, however, at that time co-accused Jagannath Dhotre (he is also not before this Court) had assaulted the brother of the informant on his right hand by iron rod. Accused No.1 Bharat had given blow of scythe on the head of the informant and then it is stated that when informant, his brother, mother, sister and nephews were going inside the house, accused persons i.e. all the applicants and co-accused had pelted stones, which caused injury to sister Savita, mother Laxmibai and brother Santosh. He then states that since police arrived, accused persons left.

7. Thus, from the contents of the FIR, it can be said that role attributed to the present applicants is of pelting stones and aforesaid co-accused Bharat and Jagannath are not before this Court from whom the alleged recovery is contemplated. It also appears that the present applicants are abiding by the conditions that has been imposed on them. There is no question of recovery of stones from them as none of the prosecution

witnesses have stated that these persons had taken the stones alongwith them. Spot Panchanama rather makes it clear that there were stones lying on the ground. None of them has been seized.

8. From the perusal of the papers, it appears that substantial part of the investigation is over. The statements of the witnesses would show that the role attributed to the applicants in FIR i.e. pelting of stones is also stated by the applicants. As regards the injuries sustained by informant Dilip is concerned, one injury is grievous and others are simple. As regards injured persons are concerned, it is stated that they have sustained simple injuries. The said grievous injury which is at the left fronto-temporal region, in the opinion of the Doctor, could have been caused by scythe. Therefore, role that can be attributable to the applicants is pelting of stones at this *prima-facie* stage. In such circumstance, custodial interrogation of the applicants is not required.

9. Alongwith Criminal Application filed to assist Public Prosecutor, certain Non-Cognizable Reports filed by Santosh Nana Fulari, who is one of the injured, have been annexed but they are all of the past events and after 17th January, 2022, it

appears that non-cognizable complaint has been filed by him on 16th April, 2022. It is not explained as to whether the Police have sought permission for enquiry under Section 155(2) of Code of Criminal Procedure. When a set procedure is available, it should be exhausted first and only filing of non-cognizable complaint will not dis-entitle the applicants from getting relief under Section 438 of the Code of Criminal Procedure.

10. Taking into consideration aforesaid facts and role attributed to the applicants, the interim protection granted by this Court on 29th March, 2022 deserves to be confirmed. Hence, the following order :

ORDER

(i) Anticipatory Bail Application stands allowed.

(ii) Interim protection granted to the applicants by this Court by order dated 29th March, 2022 stands confirmed. It is clarified that in the event of arrest of applicants i.e. applicant No.1 - Laxman Anna Dhotre, applicant No.2 - Meenabai Laxman Dhotre, applicant No.3 - Hiralal Pandurang Jadhav, applicant No.4 - Yash Dhanraj Dhotre, applicant No.5 - Rahul Sonyabapu Dhotre, applicant no.6 - Amol Hiralal Jadhav, applicant No.7 - Kachru Kalu Manjre and applicant No.8 - Savita Sunil Pawar, in connection with Crime No.0031 of 2022 registered with Ahmednagar Camp

Police Station, District Ahmednagar for the offence punishable under Sections 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, they be released on bail on P.R.Bond of Rs.30,000/- (Rs. Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Fifteen Thousand) each, if already not released.

(iii) Applicants shall not enter the area of Chipade Mala, near Appasaheb Hotel, Sarasnagar, Taluka and District Ahmednagar nor they should try to contact either on phone or personally by themselves or through any of the relatives to the informant and the witnesses till conclusion of the trial.

(iv) Applicant nos.1, 3, 4, 5, 6 and 7 to attend Ahmednagar Camp Police Station on every Wednesday and Saturday between 10:00 a.m. to 02:00 p.m. till filing of the charge-sheet and co-operate with the investigation.

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

(vi) Applicants shall not indulge in any criminal activity.

(vii) Criminal Application No.1148 of 2022 also stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE