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

913 ANTICIPATORY BAIL APPLICATION NO.517 OF 2022

**DR. BHARATBHUSHAN SONAJIRAO KSHIRSAGAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr. G.K. Naik-Thigle, Advocate for applicant;
Mr. V.M. Kagne, A.P.P. for respondent

CORAM : S. G. MEHARE, J.

DATE : 21st June, 2022

P.C.

1. Heard the learned Counsel for the applicants and the learned A.P.P. for the respondent.
2. Admittedly, both the applicants were not present on the spot of the incident. However, it has been alleged against them that they are the prime conspirators. It is also not in dispute that there was a civil dispute between the parties. The rival party had lost the civil suit and also could not succeed in getting an injunction. Both the parties are claiming the right/ownership over the plot in dispute. The incident happened when that property was proposed to be sold. The firearms have been used. The main accused involved in the offence has been arrested.

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3. The prosecution has a case that few days before the incident, the applicants had given understanding to the persons belonging to the other group side and that is the only material with the prosecution to pose the applicant as conspirators.

4. The papers of investigation placed on record along with the case diary are equally similar. It also reflects that both the parties are at political rivalry.

5. The learned A.P.P. would also rely on the statement of the first informant recorded under Section 164 of the Code of Criminal Procedure. A serious offence of attempt to commit murder and various other offences have been registered.

6. This Court, while granting interim protection has recorded certain findings as regards the evidence of conspiracy. The Court expressed a view that due to the attendance of the applicants before the police, the police machinery had an ample opportunity to interrogate the applicants. In the situation, whether the custodial

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interrogation is required or not, will have to be considered.

6. The long and lengthy argument of both the sides was towards their defences and the allegations. The prosecution anyhow intends to have the custodial interrogation of the applicants. The political rivalry is apparent along with the civil dispute as regards the property. Be that as it may, the absence of the applicants on the spot is admitted by the prosecution and so far as the allegation of prime conspirators against the applicants is concerned, the law is settled that there shall be no direct evidence of the conspiracy. It is a matter of circumstantial evidence. Whatever explanation the prosecution has to link the applicants with the alleged incident, appears insufficient. A long first information report reveals only the allegations of earlier meeting and the understanding. Whatever the evidence that has been collected by the Investigating Officer is not satisfactory at this juncture to believe that the custodial interrogation of the applicants would throw light on the alleged crime. The applicants have given the attendance but the Investigating Officer was unable to point out what sort of information he has collected in respect of the allegations levelled against the applicants.

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7. Viewing this matter from all angles, this Court is satisfied that the custodial interrogation of the applicants is not required. Hence, the following order:-

i) The Application is allowed.

ii) The interim bail granted to the applicants by order dated 28.4.2022 is confirmed on the same conditions of the bail and surety, on the condition that the applicants shall attend the concerned police station as and when called by the Investigating Officer, on written notice.

iii) Hamdust allowed.

(S. G. MEHARE, J.)

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