

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

ANTICIPATORY BAIL APPLICATION NO.839 OF 2022

SWATI W/O. SACHIN BELGE @ BELAGE
AND OTHERS ..APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA ..RESPONDENT

AND

ANTICIPATORY BAIL APPLICATION NO.896 OF 2022

NITIN S/O. SAMBHAJI BELAGE AND ORS. ..APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA ..RESPONDENT

...

Mr. Abhaykumar D. Ostwal a/w Mr. Mohit L. Deoda,
Advocates for the Applicants.

Mr. V. M. Kagne, APP for Respondents-State.

...

WITH

CRIMINAL APPLICATION NO.2476 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO.896 OF 2022

APPASAHEB KISAN VEER ..APPLICANT

VERSUS

THE STATE OF MAHARASHTRA AND ORS. ..RESPONDENTS

...

Mr. Rohit P. Patwardhan, Advocate for the
Applicant.

Mr. V. M. Kagne, APP for Respondents-State.

...

CORAM : S. G. MEHARE, J.

DATED : 29th JULY, 2022.

PER COURT:-

1. Heard the learned counsel for the applicants, the learned APP for the State and Mr. Patwardhan h/f Mr. Jadhav assisting the learned APP in ABA/896/2022.

2. This case appears to be an example of abuse of the process of law. The incident happened on 22.04.2022. Immediately the police recorded the statement of one injured Appasaheb in the hospital on 22.04.2022. The best reason is known to the police why they did not register the crime on his statement. However, the complainant alleged against the police that the police did not record his statement as per his say. The record produced further reveals that, again, the police recorded the statement of the first informant on 29.04.2022. When the police were to take cognizance of the offence, the allegations were levelled against the police that they were not recording the statement as per his say.

3. The complainant approached the learned Magistrate with an application under Section 156(3) of Cr.P.C. It has been stated in the application that the applicants and others have assaulted him with the deadly weapons described in the said application. It has also been stated in the said application that his statement was recorded in the hospital on 22.04.2022. It has also been stated in the said application that, after his discharge from the hospital, he went to Shevgaon Police Station to lodge a report, but police refused to take his report.

4. The Police have recorded a detailed statement of the complainant Appasaheb in the hospital. However, the complainant obtained the order under Section 156(3) of the Cr.P.C. The applicant has also succeeded in getting the observations from the learned Magistrate that there was a substance in the application that the police have not taken cognizance of the cognizable offence. Under the order of the learned Magistrate, the present crime was registered against the applicants.

5. The learned counsel for the applicants has vehemently argued that the complainant and other witnesses were pressuring the police to register a serious crime under Section 307 of the Indian Penal Code and other serious sections. He had vehemently argued that the complainant/first informant misled the learned Magistrate and argued before the learned Magistrate that the police did not take cognizance. The complainant has categorically set the allegations against each accused with the sole intention to implicate them in a serious crime. This is the abuse of the process of law. The police never denied taking cognizance of the statement of the first informant. A counter report was registered against the complainant. The applicants have placed on record the photographs showing that the people from the side of the complainant were armed with sticks and other dangerous weapons. If the case of the applicants is considered that the complainant was coming from the marriage and when

he get down from the bus the incident happened, then the persons from the group of the complainant must not present with arms on the spot of the incident. This fact shows that he also intended to assault. He has also argued that in the first statement of the complainant, there were no allegations of use of the weapons by each of the applicants, but they have been added as accused, alleging that the accused had assaulted the complainant and his friends were with intention to kill them. He has also argued that the weapons have been seized. No specific role has been attributed to the applicants. Hence, they may be released on anticipatory bail.

6. The learned APP and learned counsel Mr. Patwardhan h/f Mr. Jadhav assisting the learned APP have vehemently opposed the applications. They have argued that the offence is serious. Law and order situation in the village was disturbed. The police have taken action as per the order passed under Section 156(3) of the Cr.P.C. The injured has suffered injuries on the parietal bone. Though injuries were simple, the offence was grave. Hence, the application may be rejected.

7. The facts discussed above reveal that the complainant was not allowing the police to take action as per his first statement recorded in the hospital. The said statement is placed on record. Reading the said statement with the complaint and with an application before the learned Magistrate under Section 156(3) of the Cr.P.C. together,

contradiction is seen as regards the role attributed by each accused.

8. Considering the facts of the case, this Court is of the view that the police have no reason to deny taking the cognizance. The arguments of learned counsel for the applicants that the complainant pressurized the police to register the crime under a particular offence can not be brushed aside. When the police go to the hospital and record his statement, why will they deny to receive his report? The possibility of pressuring the police by the complainant to record the offence under particular sections cannot be ruled out.

9. Be that as it may, in the first statement of the informant, which was recorded immediately after the incident, there are no peculiar allegations of the use of deadly weapons by all the applicants. So far as the allegation of using the weapons is concerned, there is a contradiction in his first statement and FIR against the applicants.

10. Two accused have surrendered before the police. The police, under Section 27 of the Indian Evidence Act, have recovered almost all the weapons allegedly used in the crime. The general allegations have been made against the women accused. The injuries suffered by the injured persons were simple. Both the parties were aggressive and assaulted each other using weapons like sticks and iron rods. Considering the conduct of the complainant, it appears that he was not cooperating with the investigating officer when the

investigating officer was ready to take action on his first statement. Since the weapons have been recovered, the custodial interrogation of the applicants may not be required. In addition to the above, considering the peculiar fact of the case discussed above, the applicants may be entitled to anticipatory bail. Hence, the following order:

ORDER

- a. The applications are allowed.
- b. In the event of arrest, the applicant no.1-Swati W/o. Sachin Belge @ Belage, applicant no.2-Anita W/o. Sharad Belage, applicant no.3-Draupada @ Dropadabai W/o. Bhagwan Belage and applicant no.4-Chhaya W/o. Rajendra Palve in Anticipatory Bail Application No.839 of 2022 and applicant no.1-Nitin S/o. Sambhaji Belage, applicant no.2-Sachin S/o. Sambhaji Belage @ Belge, applicant no.3-Sharad S/o Shivaji Belage @ Belge, applicant no.4-Anil @ Avinash S/o. Shivaji Belage @ Belge and applicant no.5-Bharat S/o. Tanhaji Belage in Anticipatory Bail Application No.896 of 2022, be released on anticipatory bail, on executing P.B. and S.B. of Rs.15,000/- (Fifteen Thousand) each with one solvent surety in the like amount in Crime No.0330/2022, registered with Shevgaon Police Station, Tq. Shevgaon, District Ahemadnagar for offences punishable under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504 and

506 of the Indian Penal Code, on the condition that they shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

11. Criminal Application No.2476 of 2022 is allowed.

(S. G. MEHARE, J.)

Devendra/July-2022