

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 ANTICIPATORY BAIL APPLICATION NO.1515 OF 2021

RAJESH VITTHAL KAMBLE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. D.M. Shinde, Advocate h/f Mr. A.A. Phad, Advocate for applicants

Mr. A.M. Phule, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.15 OF 2022

MADHUKAR LIMBAJI GAIKWAD AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.L. Deshpande, Advocate for applicants

Mr. A.M. Phule, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st JANUARY, 2022

ORDER :

1 All the applicants are apprehending their arrest in connection

with Crime No.489/2021 dated 15.11.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. D.M. Shinde holding for learned Advocate Mr. A.A. Phad for the applicants in Anticipatory Bail Application No.1515 of 2021 as well as learned Advocate Mr. G.L. Deshpande for applicants in Anticipatory Bail Application No.15 of 2022 and learned APP Mr. A.M. Phule for the respondent in both applications.

3 The First Information Report has been lodged by one Harish Vitthal Pattewar, who has his ancestral land in Udgir. He states that he had visited the land on 13.11.2021 along with his cousin brother Aditya Madhukar Pattewar. He states that there was measurement carried out by the Government Officers on 11.11.2021 and 12.11.2021 of the land and they had gone to see the boundary marks on 13.11.2021 at about 4.30 p.m. At that time, applicant Rajesh and Kanhaiyya went there and started disputing with them. It was told that they have purchased the said land and they should not come. Thereafter applicant Rajesh had assaulted the informant by iron rod and the blow was received by the informant on his head. When Aditya went to rescue informant, he was obstructed by Kanhaiyya and was assaulted by stick on his leg. Thereafter, it is stated that Kanhaiyya had

called his colleagues Suresh, Siddharth, Madhukar and Vijaykumar. All of them stated that the informant and Aditya should not come again and they were then assaulted by sticks and the iron rod, kicks and fist blows to informant and Aditya. They rescued themselves and went to Udgir Rural Police Station. They were then asked to take treatment and accordingly informant went to Udgir Hospital.

4 According to the applicants in Anticipatory Bail Application No.15 of 2022, the applicant No.1 was retired Surveyor from T.I.L.R. office and applicant No.2 is a private Surveyor. Learned Advocate appearing for those applicants submits that during the pendency of this application, applicant No.1 Madhukar Limbaji Gaikwad has expired. However, as regards the applicant No.2 is concerned, he has been falsely implicated. He had no motive at all and concern with the land in question. As regards the applicant No.1 in Anticipatory Bail Application No.1515 of 2021 is concerned, it is then stated that in 7/12 extract pertaining to land Gat No.38/1 name of the applicant No.1 is to the extent of 1 H 98 R only. By virtue of an agreement to sell and thereafter a sale deed from one Sneha Dilip Bangale, whose name is also appearing in the 7/12 extract, applicant No.1 Rajesh has purchased 60 R land for a consideration of Rs.45,00,000/-. There was no question of obstructing the applicant No.1. He also submits that the custody of the

applicants is not required, in view of the contents of the First Information Report.

5 Per contra, the learned APP strongly opposed the application. It was also submitted that though certain other accused persons have been arrested and recovery has been done, these applicants have also used the weapons and those weapons are required to be recovered.

6 At the outset, it is to be noted that from the application that was placed before the Additional Sessions Judge, contention was made that accused Kanhaiyya, Suresh and Vicky were arrested. They were sent to Police Custody and had recovered the iron rod and sticks from the spot. The question, therefore, is, whether they could have discovered the weapon used by the accused Rajesh. Taking into consideration the contents of the First Information Report the blow of iron rod given by Rajesh had hit to head of the informant, which is the vital part of the body and, definitely, as against him offence under Section 307 of the Indian Penal Code, prima facie, can be said to have been made out. He does not, therefore, deserve to be released on pre-arrest bail. However, as regards the applicant No.2 in both the applications, omnibus statement has been made that they have used sticks and iron rod to cause injuries to informant as well as Aditya. As regards the applicant No.2 in Anticipatory Bail Application No.15 of 2022 is concerned,

why that person should have a common intention with the other accused persons, is a question. When nothing has been stated about any relationship or motive, we cannot give much importance to the omnibus statement, at this stage and, therefore, case is made out to release applicant No.2 in both the applications on pre-arrest bail. The interim protection deserves to be confirmed. Hence, following order.

ORDER

1 Anticipatory Bail Application No.1515 of 2021 stands rejected in respect of applicant No.1 Rajesh Vitthal Kamble.

2 Anticipatory Bail Application No.15 of 2022 stands disposed of in respect of applicant no.1 Madhukar Limbaji Gaikwad, in view of his death.

3 Both applications stand allowed in respect of applicant No.2.

4 The ad-interim protection, granted by this Court earlier to applicants vide order dated 14.12.2021 (in A.B.A. No.1515 of 2021) and 10.01.2022 (in A.B.A. No.15 of 2022), is hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of the applicants viz. **Siddharth Rajesh Kamble** (in A.B.A. No.1515 of 2021) and **Vijaykumar Kalappa Patwari** (in A.B.A. No.15 of 2022), in connection with Crime No.489/2021 dated 15.11.2021 registered

with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 326, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, 1860, they be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

5 The applicants shall not indulge in any criminal activity nor they should tamper with the prosecution evidence, in any manner.

6 They should cooperate with the investigation and shall attend the Udgir Rural Police Station, Dist. Latur, on every Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

(Smt. Vibha Kankanwadi, J.)

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