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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1489 OF 2022

Monali Rahul Hinge and ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 2037 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO. 1489 OF 2022

Nitin Dilip Gaikwad ...Intervener

In the matter between

Monali Rahul Hinge and ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Ganesh Gole, i/b Mr. Arif Ali M. Ali, for the Applicants.

Mrs. J. S. Lohokare, APP for the State.

Mr. Narayan Rokade, for the Intervener.

CORAM: N. J. JAMADAR, J.

DATED : 1st JULY, 2022

ORDER:-

1. This is an application for pre-arrest bail in connection with CR No.145 of 2022, registered with Yeola Police Station, Nashik (Rural), for the offences punishable under Sections 143, 147, 149, 302, 323 and 504 of the Indian Penal Code, 1860 ("the Penal Code").

2. Dilip Gaikwad (the deceased) was the holder of agricultural land situated at village Kusur, Taluka Yeola, District

Nashik. His uncle Vijay Gaikwad was the holder of the adjacent parcel of the land. Those lands were the ancestral properties of the deceased and his uncle. Though the said land stood in the name of Vijay Gaikwad, it was under cultivation of the deceased. Few months prior to the occurrence the uncle of the deceased sold the said land to Sangram Mengal, Nilesh Hinge, the co-accused, and the applicants. The deceased, claiming to have preferential right to purchase the said land, instituted suits in Civil Court.

3. Despite the sale, the deceased claimed to be in possession of the said land. On 1st May, 2022, the applicants and co-accused forcibly entered into the said land and ploughed the same. While ploughing, the applicants and co-accused allegedly destroyed the *bandh* and committed encroachment to the extent of 30 to 40 feet. The deceased tried to reason with the applicants and the co-accused. They paid no heed and continued to plough the land whilst administering threats. Co-accused Sangram Mengal and Rahul Hinge brought diesel in a water bottle, poured the same on the person of the deceased and set him on fire. After hearing the alarm raised by the first informant, the wife and sons of the deceased came thereat. He was shifted to Civil Hospital, Nashik. While being treated

thereat, the deceased lodged report. Initially crime was registered for the offence punishable under Section 307 of the Penal Code. After the deceased succumbed to the injuries, offence punishable under Section 302 of the Penal Code came to be added.

4. Initially, the learned Additional Sessions Judge had granted interim protection. Subsequently, by an order dated 27th May, 2022, the application came to be rejected. However, the interim protection was continued till 6th June, 2022.

5. When the matter was listed before the Court on 7th June, 2022, this Court was persuaded to grant interim pre-arrest bail, *inter alia*, observing specific role of pouring diesel and setting the deceased on fire was attributed to co-accused Sangram Mengal and Rahul Hinge and no overt act was attributed to the applicants.

6. I have heard Mr. Gole, the learned Counsel for the applicants, Mrs. Lohokare, the learned APP for the State, and Mr. Rokade, the learned Counsel for the Intervener. With the assistance of the learned Counsels, I have perused the material on record including the First Information Report ("FIR") and the copies of the orders passed by the Civil Court.

7. Mr. Gole, the learned Counsel for the applicants, would submit that there are clear and categorical allegations qua co-accused Sangram Mengal and Rahul Hinge, who allegedly set the deceased on fire. In contrast, the role attributed to the applicants who are the purchasers of the land from the uncle of the deceased is that of ploughing the field. The fact that the predecessor-in-title of the applicants and, thereafter, the applicants have been in possession and cultivation of the said land is borne out by the orders passed by the Civil Court in RCS Nos.20 of 2022 and 16 of 2022, whereby the prayer of the deceased to grant temporary injunction came to be rejected. Thus, the mere presence of the applicants at the scene of occurrence is not sufficient to draw an inference that the applicants were the members of an unlawful assembly and the offences were committed by the co-accused in prosecution of the common object of the said assembly.

8. Per contra, Mrs. Lohokare, the learned APP, would submit that all the applicants had the motive to eliminate the deceased. The co-accused Sangram Mengal and Rahul Hinge poured the diesel on the person of the deceased and set him on fire in prosecution of the common object of the said unlawful assembly. Therefore, at this stage, the applicants do not

deserve exercise of discretion as there is strong possibility of tampering with evidence and fleeing away from justice.

9. Mr. Rokade, the learned Counsel for the intervener, supplemented the submissions of the learned APP. It was further submitted that the wife and the rest of the family members of the deceased are in a vulnerable position and there is an imminent danger to the safety of the wife and children of the deceased, in the event the applicants are given the benefit of pre-arrest bail.

10. Evidently, the offences have their genesis in the dispute over the possessory title over the land, of which Vijay Gaikwad, the uncle of the deceased was the holder. The said Vijay conveyed the land to the applicants and others. The deceased staked claim to the land on the premise that he had been in possession thereof and also had a preferential right to purchase the same. The submission of Mr. Gole that the endeavour of the deceased to restrain the defendants from causing obstruction to the possession of the deceased over those lands was repelled by the Civil Court finds support in the orders in Regular Civil Suit Nos.20 of 2022 and 16 of 2022. The Civil Court found that the applicants – defendants, *prima facie*, appeared to be owner and cultivators of the said land.

11. In the aforesaid context, if the allegations in the FIR are perused, *prima facie*, it appears that the allegations against two sets of persons are quite distinct. The applicants allegedly not only ploughed the land which previously belonged to Vijay Gaikwad but committed encroachment to the extent 30 to 40 feet over the land of the deceased. The latter tried to reason with them but the applicants did not pay heed to his request. At that moment, according to the deceased, the co-accused Sangram Mengal and Rahul Hinge brought diesel in a bottle, poured it on his person and set him on fire. It is pertinent to note that the FIR does not indicate that it was the allegation of the deceased that before the co-accused poured the diesel on his person, any of the accused either assaulted him or used criminal force to him. On the contrary it *prima facie* appears that upto that point the grievance of the deceased was that the applicants were ploughing the land, by committing encroachment and he tried to reason with them.

12. In the aforesaid view of the matter, *prima facie*, the presence of the applicants in the said land for the purpose of ploughing, cannot be said to be either unnatural or unauthorised. It is true that an assembly which is lawful may turn unlawful at a latter point of time. However, in the absence

of any overt act attributed to the applicants, apart from the fact that the applicants were ploughing the field, it appears, *prima facie*, rather difficult to draw an inference that the applicants shared the common object with the co-accused to eliminate the deceased.

13. Since the allegations against the co-accused operate in distinct sphere, I am persuaded to hold that a *prima facie* case for exercise of discretion in favour of the applicants is made out. Thus, I am inclined to confirm the order of interim pre-arrest bail.

14. As regards the apprehension on the part of the prosecution and the intervener, in my view, stringent conditions would serve the purpose.

15. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The order of interim pre-arrest bail dated 7th June, 2022 is made absolute on the terms and conditions incorporated therein.

(iii) In addition;

(a) The applicants shall attend Yeola Police Station on every alternate Sunday from 10.00 am. to 1.00 pm. for a

period of three months or till filing charge-sheet, whichever is earlier.

(b) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(c) The applicants shall not enter the limits of village Kusur for a period of three months or till the filing of the charge-sheet, whichever is earlier.

(d) The applicants shall furnish their permanent residential address and contact details to the Investigating Officer, Yeola Police Station, within a period of eight days from today and update the same in case of any change therein.

In view of disposal of ABA/1489/2022, Interim Application No.2037 of 2022 does not survive and stands disposed.

By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and the trial court shall not be influenced by any of the observation made in any further proceedings which may arise out of the said crime.

[N. J. JAMADAR, J.]