

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.640 OF 2021

(TULSHIRAM DARYAPPA GODSE & ANR....VS.. STATE OF MAH. THR. PSO PS ASEGAON, DIST.
WASHIM)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.V.Band, Advocate for Applicants.
Shri Sagar Ashirgade, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 16, 2022.

1. By way of the present application filed under Section 438 of the Code of Criminal Procedure the applicants are seeking grant of bail in the event of their arrest in Crime No.228 of 2021 dated 20/06/2021 registered on a complaint of one Rupesh Vitthal Gend against the applicants for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, subsequently Section 326 of the Indian Penal Code was added.

2. It is the case of the prosecution that the complainant lodged a complaint stating therein that he owned 10 acres of agricultural land and also Mahindra Tractor. He used to give the said tractor on hire basis to the agriculturists for their agricultural activities. It is alleged that on 20/06/2021 at about 08:00 a.m. one Bharat Manwar had hired his tractor for agricultural

operations in Ambapur Shiwar and therefore, the driver of the tractor viz. Sagar Khairavkar has taken the same to the agricultural field of Bharat Manwar. It is further alleged that at the relevant time the applicant No.1 Tulshiram reached there and stopped the tractor and asked the driver that agricultural activities of sowing was not properly done by him and therefore, started quarrel with the driver of the tractor. It is further alleged that the applicant No.1 assaulted the driver Sagar Khairavkar by stone and he got injured in the said assault and on information received about the said incident from the driver of the tractor, the complainant, who was doing agricultural activities at Ambapur Phata, called the driver and thereafter the complainant and Sagar went for village on his motor cycle. It is stated in the complaint that when they reached to Akhada (Wrestling Ring) the present applicants were present and as soon as the complainant and driver Sagar reached there the applicant stopped their Motor cycle and assaulted Sagar and the complainant with the help of stone, fist blows and kicks. It is further alleged that at the relevant time his father, mother, brother, maternal aunt, and cousin came out of the house after hearing noise. They were also assaulted by the applicants. Accordingly, the complaint was lodged.

2. Heard learned counsel for the applicants and the learned A.P.P. for the State.

3. The learned counsel for the applicants points out that there are counter FIRs and the FIR lodged by the applicant No.1-Tulshiram is prior in time and it was registered as Crime No.227 of 2021 against the complainant in Crime No. 228 of 2021 i.e. Rupesh Vitthal Gend and three others for the offences punishable under Section 324, 323, 504, 506 and 34 of the Indian Penal Code. It is submitted that out of the rivalry and as a counterblast the FIR No.228 of 2021 was filed against the applicants and thereby the applicants have been falsely implicated in the alleged offence.

4. It is submitted that, initially, the offence was not registered under Section 326 of the Indian Penal Code, however, after obtaining a certificate from a private hospital, after lapse of three months, Section 326 of IPC was added. In the said backdrop, he further points out that on 27/09/2021, after hearing the learned counsel for the applicants and considering the matter on merit and looking in to the allegations made in the FIR, this Court had granted ad-interim protection to all the applicants. He therefore, prays for confirmation of the ad-interim protection granted to the applicants. The learned counsel for the applicants stated that investigation is complete and charge-sheet is filed in this matter.

5. The learned A.P.P., on the other hand, opposed the application and submits that the sufficient material has been collected by the police during the investigation. Accordingly, he prays for rejection of the application.

6. I have perused the FIR and also Police Diary, which is made available by the learned A.P.P.

7. From the record, it is clear that there are counter FIRs filed in the present case. The FIR filed by applicant No.1 against the complainant in this matter and other three accused is prior in time and subsequently the FIR No.228 of 2021 was filed against the applicants. It is clear from the counter FIR that there is rivalry between the parties. It is pertinent to note that in this matter Section 326 of IPC was added after three months after considering the medical certificate issued by a private hospital. This Court on 27/09/2021 granted ad-interim protection to the applicants on certain conditions, one of which was to attend Police Station on every Sunday and Wednesday between 11:00a.m. and 02:00p.m. to facilitate the investigation, accordingly, the applicants have attended the Police Station.

8. The learned A.P.P. has not pointed out anything where-from it can be said that the applicants have misused the liberty granted to them. Moreover, nothing

has been pointed out why the custody of the applicants is necessary in the alleged offence. In that view of the matter, I pass the following order:

- i) The application is allowed.
- ii) The ad-interim bail granted on 27/09/2021 to the applicants is hereby confirmed.

The Criminal Application stands **disposed of** accordingly.

JUDGE

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