

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

CRIMINAL APPLICATION (ABA) NO.713 OF 2021

(VAIBHAV VAMAN MOSAMBE & OTH...VS.. STATE OF MAH. THR. PSO PS MEHKAR, DIST.
BULDANA.)

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

Court's or Judge's orders

Shri S.V.Sirpurkar, Advocate for Applicants.
Ms Trupti Udeshi, A.P.P. for Non-applicant/State.
Shri A.J. Thakkar, Advocate for Informant.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 01, 2022.

1. Heard.

2. Crime No.443 of 2021 came to be registered on a complaint of Vinod Baliram Avhale with Police Station, Mehkar, District : Buldana against 9 accused persons, including the present applicants, for the offences punishable under Sections 395 and 324 of the Indian Penal Code. It is the case of the prosecution that on 23/09/2021 informant-Vinod Baliram Avhale lodged report in the Police Station that field bearing Survey Nos. 97/1, 97/6 is undivided joint Hindu property of his parents, three uncles and aunt. Civil disputes are pending between the family members in the civil Court and also in revenue Court. It is stated that one criminal proceedings is also pending against accused No.3 Vijay. It is further submitted that informant's parents executed Power of Attorney in respect of all the agricultural lands. Accused

No.4 Dr. Uddhav executed and registered Sale Deed in respect of 0.04 HR out of field Survey No. 97/4 in favour of the accused No.1-Vaibhav on 25/08/2020. Thereupon, the informant raised an objection before Tahsildar to the mutation of the said land.

3. It is alleged that on 15/09/2021 accused Nos. 3 and 4 were measuring the field at that time one Shri Gaus made a phone call to the informant and called him in agricultural field for measurement. Accordingly, the informant went in his field at about 02:30 p.m. and opposed the accused for measurement of the field. Thereafter accused Nos. 3 and 4 started beating the informant by means of slaps and fist blows. At that time accused No.1, 2 and 5 to 7 came there holding iron rod and sticks in their hands. Accused No.1 assaulted the informant by means of iron rod on lower side of his leg and also sat on the chest of the informant and gave fist blows on the chest. Accused No.2-Waman and accused No.6-Abhimanyu attempted to assault the informant by means of iron rod on his head, but the informant saved himself. However, he sustained injury above his left eye. Accused No.5-Prakash and accused No.7-Sanjay and other three accused persons assaulted the informant by means of sticks on his hands and legs. It is also alleged that at that time someone has snatched Rupees Twenty Thousand from the pocket of the informant and also snatched his gold chain.

4. Shri Sirpurkar, learned counsel for the applicants, points out that after considering the allegations made in the F.I.R. and the provisions of the Indian Penal Code, which are made applicable in this case, this Court on 27th October 2021 had granted ad-interim protection to the applicant Nos. 2 to 5 and as regards the applicant No.1 the application for ad-interim anticipatory bail was not pressed till filing of the reply. He therefore, submits that, even taking allegations made in the FIR on the face of it, Section 395 of the Indian Penal Code does not attract in this case.

5. Shri Sirpurkar, learned counsel for the applicants submits that the complainant lodged the report out of rivalry between the parties and there is also a mention about such dispute in the FIR. He, therefore, submits that the applicants are falsely implicated in the alleged offence.

6. On the other hand, the learned APP strongly opposed the application and submits that there is sufficient material which *prima-facie* show involvement of the applicants in the alleged offence. She further states that there is also a criminal case pending against the applicant No.1 under the provisions of the Maharashtra Prohibition Act, accordingly she prays for rejection of the instant application.

7. Shri A.J. Thakkar, learned counsel appearing on behalf of the informant submits that as there is sufficient material available against the applicants this Court may not grant bail to the applicants.

8. On perusal of the case diary and after going through the contents of the FIR, *prima-facie*, it appears that there is dispute between the parties. There are civil suits and some criminal proceedings are also pending. It further appears that the alleged incident has taken place out of such disputes. However, *prima-facie*, there are no allegations which would attract Section 395 of the Indian Penal Code. In that view of the matter, I am of the opinion that the applicant Nos. 2 to 5 are entitled for confirmation of the *ad-interim* anticipatory bail granted to them vide order dated 27th October 2021 and the applicant No.1 is entitled to be released on bail in the event of his arrest in the alleged offence. Accordingly, I pass the following order.

- i) The application is allowed.
- ii) Order dated 27th October 2021 releasing applicant Nos. (2) Vaman Sukhdeo Mosambe (3) Prakash Dnyandeo Jadhav, (4) Abhimanyu Prabhakar Shewate, and (5) Sachin Dnyaneshwar Ugale on ad-interim bail is confirmed.

- iii) It is directed that in the event of arrest of applicant No.1-Vaibhav Vaman Mosambe in connection with Crime No. 443 of 2021, registered with non-applicant No.1 Police Station for the offences punishable under Sections 395 and 324 of the Indian Penal Code, he shall be released on bail on furnishing P.R. Bond for Rupees Twenty Five Thousand with one solvent surety in the like amount.
- iv) The applicants shall attend the concerned Police Station on every Friday and Saturday between 10:00 a.m. and 12:00 noon, initially for three weeks, and thereafter as and when their presence is required.

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

JUDGE

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