

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

CRIMINAL APPLIATION (BA) NO. 1365/2021
Baban Mangalji Bagde...Versus... State of Maharashtra

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

Court's or Judge's orders

Mr. Mahesh Rai, Advocate for the applicant.
Mr. S.A.Ashirgade, APP for Respondent/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/01/2022

1] Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard Mr. Mahesh Rai, learned counsel for the applicant and Mr. Ashirgade, learned APP for respondent/State.

3] The applicant is arrested for the offence punishable under Sections 307, 323, 34, 427, 504 and 506 of the IPC for having assaulted one Ritesh Khobragade by fist and blows on account of a dispute regarding the construction being made by the victim on his plot. Though the informant was asked to desist from making construction on the ground that the column being erected by him came into the boundary of the plot owned by the applicant, since the same was not

heeded to, there ensued a quarrel in which the applicant is said to have threatened the victim and assaulted him by fist and blows on 8.11.2021. The actual assault by wooden stick, is attributed to the son of the applicant namely Sushil on the head of the victim, which has resulted in the registration of the said offence.

4] Mr. Rai, learned counsel for the applicant submits that the entire incident was the result of a scuffle which arose due to the allegation regarding suspected encroachment in the land of the applicant, by the victim. He submits that the incident happened on the spur of the moment and there was no premeditation. He further submits that the wife and son of the applicant have already been released on bail and the applicant who has been arrested on 9.11.2021 has co-operated with the investigation and is no longer required to be incarcerated and therefore, be released on bail on such conditions as may be imposed by this Court.

5] Learned APP submits that the applicant was the instigator of the scuffle and therefore, was the person who was responsible for the same by pushing him down and assaulted the victim by kicks and fists and therefore, the application be rejected. He however fairly admits that there is no past history in the matter, but the applicant may try to influence the witnesses, if released.

6] Considering the nature of the role attributed to the applicant, though the applicant appears to be the instigator of the scuffle, it is prima facie apparent that the incident occurred in the heat of the moment and there does not appear to be any premeditation on part of the applicant. Though the charge-sheet has not been filed, the applicant is in MCR since 9.11.2021, since the day he was arrested. The assault upon the head of the victim is not by the applicant, but by one of his son viz. Sushil, considering which I do not see any reason for the further incarceration of the applicant. The apprehension expressed by the learned APP can be taken care of by putting conditions. Hence, the following order.

7] The application is allowed.

(i) The applicant Baban Mangalji Bagde be released on bail for the offence punishable under Sections 307, 323, 34, 427, 504 and 506 of the IPC in Crime No.636/2021 on executing the PR bond of Rs. 75,000/- and two solvent sureties in the like amount.

(ii) The applicant shall attend Police Station Kalmeshwar on every Monday and Thursday between 10.00 a.m to 2.00 p.m. and shall get his presence recorded in a separate diary maintained for that purpose, till the charge-sheet is filed. Any default of this condition shall entail in

cancellation of the bail.

(iii) The applicant shall not indulge into any similar offence while on bail. Any single offence shall also entail him the cancellation of bail.

(iv) The applicant shall cooperate with the prosecution in all respect, and shall not tamper with the evidence or influence the witnesses.

8] Application stands disposed of accordingly.

JUDGE

Rvjalit