

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.258 OF 2023
WITH ABA/564/2023

BHAGWAT SHRIKRUSHNA KHARAD AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicants : Mr. R. V. Gore

APP for Respondents: Mrs. R. P. Gaur

...

CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2023

PER COURT :

1. At the outset, when this Court has shown disinclination to entertain the Application of Bhagwat Kharad, learned Counsel for this Applicant, on instructions, seeks withdrawal of the Application.

2. Application stands dismissed as withdrawn *qua* Applicant No. 1 – Bhagwat Kharad.

3. Applicant No. 2 – Jalindar in ABA/258/2023 as well as Applicant – Macchindra in ABA/564/2023 are apprehending arrest in connection with C.R. No. 440/2022 registered with Paithan Police Station for the offences punishable under Sections 307, 324, 143, 144, 147, 148, 149, 506 of Indian Penal Code.

4. Nanasaheb Kharad gave information to the police stating that on 03.12.2022 in the evening at about 07.00 pm an incident occurred in which Arjun, Bhagwat, Avinash, Macchindra and Jalindar threatened the informant for withdrawal of the complaint lodged by them. On the next day at about 07.00 pm when the informant was going to his house from the agricultural field he noticed that his brother Satish and Nandu had sustained injuries and they were assaulted by the Applicants and others specifically named in the FIR. There is allegation against co-accused Bhagwat and Jalindhar of instigating the assault. Against Jalindhar it is also alleged that he assaulted informant with stick.

5. Learned Counsel for the Applicants states that as far as the Applicant – Macchindra is concerned, there is no allegation against him that he has caused any assault on informant or other injured persons. It is his contention that similarly placed accused are granted anticipatory bail by order dated 08.02.2023 passed in ABA/1798/2021 and hence on parity this Application deserves to be allowed. As far as Jalindhar is concerned, it is submitted that though there is

allegation of instigation and assault against him, however, it is alleged that he has used wooden stick. It is submitted that having regard to the injury certificate placed on record doubt is created as to whether the injured Santosh suffered simple or grievous injuries. According to him, investigation in the crime is already completed. Hence, the custody of the Applicants is not necessary.

6. Learned APP opposed the application with the contention that it is a serious offence wherein two groups had fought with each other with weapons. There is specific allegation against Jalindhar for instigation of the assault to police by use of weapon. In this regard, reference is made to the injury certificate of Nandu to show that he sustained grievous injury. In the statement of Nandu names of the number of assailants including Jalindhar and Macchindra are mentioned. It is submitted that having regard to the seriousness of the offence applications may be rejected.

7. There is no dispute about the fact that in the first information report allegations are made against Bhagwat, Arjun and Jalindhar for causing assault.

Perusal of the order dated 08th February, 2023 passed in ABA/1798/2022 shows that similarly placed accused were granted anticipatory bail. Thus, at this stage, this Court finds no reason for not extending parity to the present Applicant Macchindra.

8. As far as Applicant Jalindhar is concerned, there is allegation against him that he used stick in the said assault. Use of the stick *prima facie* has resulted into causing of simple injuries to the informant. As regards injury caused to Nandu, the injury certificate indicates that the said injuries caused with hard and sharp object. At least at this stage these injuries cannot be attributed to Jalindhar who was holding stick in his hand as per the statement of witnesses. The investigation into the crime is over. Further, there is nothing on record to show that there are criminal antecedents against Applicant Jalindhar. In such circumstances, this Court finds liberty of this Applicant needs to be protected.

9. Hence, the order:

O R D E R

(i) In the event of arrest the Applicants —

Jalindhar and Machindra in connection with C.R. No. 440/2022 registered with Paithan Police Station for the offences punishable under Sections 307, 324, 143, 144, 147, 148, 149, 506 of Indian Penal Code, they shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) each with one solvent surety in the like amount.

- (ii) They shall attend the concerned police station as and when required.
- (iii) They shall not contact the prosecution witnesses directly or indirectly.
- (iv) They shall not interfere with the evidence in any manner whatsoever.
- (v) They is further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)

Malani