

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1795 OF 2022

Sharad Dattatreya Kulkarni And Others ...Applicants

Versus

The State Of Maharashtra And Another ...Respondents

Mrs. Mansi Ghanekar h/f. Mr. N.S. Ghanekar, Advocate for the applicants.

Mrs. R.P. Gour, APP for respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th JANUARY, 2023

ORDER :

1. The applicants apprehend arrest in Crime No. 231/2022, registered with Hasnabad Police Station, Jalna, for offences punishable under sections 143, 147, 149, 379, 427, 504, 506 of the Indian Penal Code.

2. First Information Report is lodged by Eknath Kartare alleging that he is running a brick klin in gairan land Gut No. 153 from the year 2019. Accused Sharad, Rohit and Sunil are trying to grab the said land on which informant is running brick klin and they are troubling him since last one month. He has lodged report against accused persons which is registered at NC No.

320/2022, under sections 504 and 506 of IPC and NC No. 322/2022, under sections 427, 504, 506 read with 34 of IPC. On 28.08.2022 at 3.00 pm., when he and his family members went to the brick klin, they saw two unknown persons removing tin shade erected by him, and keeping it in the tractor owned by accused Sharad. When informant and others reached on the spot, unknown persons drove away the tractor. Accused Nana Khadekar was driving the tractor. Accused Anna Buchade was sitting in the tractor. Tractor owned by informant was driven away by accused Gopinath and it was damaged. Accused Sharad, Rohit and Sunil were present there. They all gave life threats to informant. They brought sticks from the shade and when informant and his family members sat in the car, they broke front and side glass of the car. Accused persons have stolen 10 tins, iron ladder, connecting minning and have damaged water tank and have burnt down one tarpaulin.

3. Heard the learned advocate for the applicants and learned Additional Public Prosecutor for respondents. Perused the investigation papers.

4. The learned advocate for the applicants submitted that there is delay of one month in lodging FIR. Informant has not disclosed about commission of offence in the NC report filed earlier.

5. Learned Additional Public Prosecutor has pointed out from the investigation papers that on the date on which the incident has taken place, informant has lodged report with Jalna Taluka Police Station instead of Hasnabad Police Station. Subsequently the offence is registered with Hasnabad Police Station.

6. All the applicants are named in the FIR. Perusal of investigation papers shows that applicant No. 2-Nana Khadekar, applicant No. 4- Gopinath Kakade and applicant No. 5- Rohit Kulkarni have played active role in commission of offence. Statement of one labour working with applicant No. 5-Rohit discloses that applicant No. 5 took him to brick klin and asked him to remove tin shade. There are direct allegation of commission of theft and damage to the property of informant by applicants No. 2, 4, and 5. Stolen articles, so also sticks and hammer used in the offence are yet to be recovered. Custody of applicants No. 2, 4, and 5 is necessary for effective investigation.

Their application is therefore rejected.

7. At this stage, learned advocate for the applicants seeks continuation of interim protection granted to applicants No. 2, 4, and 5 for a period of two weeks. Interim protection granted to applicants No. 2, 4 and 5 to continue for a period of two weeks from today.

8. So far applicants No. 1, 3 and 6 are concerned, there are vague and general allegations against them and nothing is to be recovered from them. Pre-trial custodial detention of applicants No. 1, 3, and 6 is therefore not warranted in the facts of the present case. The application of applicants No. 1, 3, and 6 is therefore allowed by confirming interim order dated 27th December, 2022.

9. Till filing of charge sheet, applicants No. 1, 3, and 6 shall attend the concerned police station as and when called by the investigating officer and shall co-operate in the investigation. The applicants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]