

weapons were raising slogans and abusing the members of the Muslim community. The co-accused Akshay Gholap allegedly outraged the modesty of the first informant by pulling her towards him. The applicants and the co-accused exhorted the members of the said unlawful assembly not to spare any member of Muslim community including women.

4. The first informant allegedly rushed towards her house. The members of the unlawful assembly chased her. While the first informant was narrating the incident to her husband Iliyas, the co-accused Akshay Gholap, who was armed with sword, the applicants Kunal Gholap and Gorakh Gholap, who were armed with a scythe, Sagar Jamdade, who was armed with a sword, Deepak Kamble, who had a stone, along with other co-accused, assaulted the husband of the first informant by the respective weapons. The first informant was also assaulted. Sufiyan Shaikh, the cousin of Iliyas, came to their rescue. Thereupon, the co-accused Mahesh Ghone assaulted Sufiyan Shaikh by means of iron rod. All the accused threatened to eliminate Sufiyan and assaulted him. The applicant Komal Jamdade allegedly assaulted the first informant and snatched away the marriage string from her neck. The accused threatened the first informant, the injured and the other members of the Muslim community out of their lives, if they stayed in the said locality.

5. The first informant alleges that the injured Iliyas and Sufiyan were taken to hospital. Thereafter, the first informant and her relatives left Daund. The injured Sufiyan and others were allegedly falsely prosecuted at the instance of the accused party including for the offences punishable under the Scheduled Castes and the Scheduled Tribes (Prvention of Atrocities) Act, 1989.

6. On 30th November, 2022 the first informant approached Daund police station and lodged verbal report and also gave report in writing. However, the police did not take cognizance of the said report. No action was taken by Sub Divisional Police Officer as well. Hence, the first informant lodged complaint before the learned Magistrate. Pursuant to an order passed by the learned Magistrate under section 156(3) of the Code of Criminal Procedure, 1973, the first information report came to be registered.

7. Apprehending arrest, the applicants approached the Court of Session. As the learned Additional Session Judge declined to exercise the discretion, the applicants have preferred this application.

8. Mr. Kanaad Aphale, the learned counsel for the applicants, submitted that the instant first information report is a counter blast to the report lodged by applicant No. 4 Komal Jamdade against the informant party on 9th November, 2022. It was submitted that the

allegations in the first information report match incident to incident with the report lodged by the applicant No. 4 Komal Jamdade. In fact, in the assault perpetrated by the informant and injured, the co-accused therein, the first informant and her brother Sagar, the applicant No. 1, had sustained grievous injuries. Her cousin Akshay Gholap was also assaulted by means of sword. Rest of the members of the accused party had also sustained injuries. Since the allegedly injured persons in the instant case were arrested by the police in connection with C.R.No. 547 of 2022 for the offences punishable under sections 143, 147, 148, 149, 307, 325, 354, 452, 427, 504 and 506 of Indian Penal Code, 1860 and sections 3(1)(f), 3(1)(s), 3(2)(va) and 7(1)(d) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sections 4 read with 25 of Arms Act, 1959, the first informant has lodged the complaint to give a counter blast.

9. The learned counsel for the applicants further submitted that the injury certificates of the injured Iliyas and Sufiyan have been obtained subsequently to suit the version of the prosecutrix. Therefore, as the applicants are, in fact, the victims of the assault perpetrated by the informant party, they deserve the exercise of the discretion.

10. The learned APP and the learned counsel for the first

informant resisted the prayer for pre-arrest bail. It was submitted that there is material to indicate that on the very day of the occurrence, injured Iliyas and Sufiyan were taken to government hospital and, thereafter, to private hospital. The first informant party was constrained to file a private complaint as their reports were not registered by the local police. The learned counsel for the first informant/ intervener submitted that a reign of terror was created in Daund and, therefore, the first informant and her relatives were forced to stay away from the town. The applicants can not be permitted to take undue advantage of lodging of the report under the SC and ST Act, 1989 despite mounting murderous assault on the informant party, urged the learned Counsel for the Intervener.

11. I have carefully considered the allegations in the first information report and the material on record. I have narrated the allegations in the FIR, in a little detail, on purpose.

12. Evidently, in respect of one and the same occurrence two versions have been reported. Interestingly, in both the matters the first information report was lodged by a lady and prelude to assault is the attempt to outrage the modesty of the first informant lady. The informant in both the crimes claimed to have rushed to the safety of their respective houses. They were followed by the

members of the accused party armed with deadly weapons, and the resultant assault on the first informant and her relatives.

13. From the material on record, it prima facie appears that it was a case of free fight between two groups, having a communal overtone.

14. Undoubtedly, the instant first information report came to be registered at a later point of time pursuant to the directions of the learned Magistrate under section 156(3) of the Code of Criminal Procedure, 1973. The first information report No. 547 of 2022 was registered on 9th November, 2022 wherein role of assault by means of deadly weapons was attributed to the injured herein. The two FIRs thus represent a case and a cross-case. In a case of this nature, where the members of two groups indulge in a free fight and sustain injuries in the occurrence, the question as to whether each of the members of the respective unlawful assemblies, shared the common object or knew that the offences were likely to be committed in prosecution of the said common object, becomes critical and warrants adjudication.

15. In the case at hand, there is an interval of time between the date of occurrence and the lodging of first information report No. 547 of 2022. The complainant, it seems, came to be lodged after the complainant's report was not allegedly recorded. Prima facie,

however, there is material to indicate that the injured Iliyas and Sufiyan were initially taken to the Sub District Hospital, Daund and thereafter to private hospital and a history of assault by known persons was narrated. The injury certificates reveal that Iliyas had suffered a grievous hurt on fronto temporal region and two simple injuries on occipito region. The injured Sufiyan had sustained two simple injuries on frontal area and the chest.

16. In the backdrop of the aforesaid nature of the injuries if the allegations in the FIR are considered, it prima facie, appears that the role of assault by deadly weapons has been attributed to a number of accused. Prima facie, it appears that Iliyas suffered grievous hurt and two simple injuries. Assault to Iliyas is attributed to a number of accused, including applicants Gorakh Gholap, Shrinath Nanaware and Deepak Kamble apart from the co-accused Mahesh Ghone, Kunal Gholap and Babu Jamdade. Since one of the injuries appears to be grievous, at this stage, it appears to be difficult to attribute the said grievous injury to the particular accused. None of the applicants has been attributed with the role of assault to Sufiyan specifically. The injury on frontal area suffered by Sufiyan appears to be, prima facie, attributable to co-accused Mahesh Ghone.

17. In the backdrop of free fight, where the injured herein have

been accused in C.R.No.547 of 2022, prima facie, the applicants can be said to have furnished a version which competes in probability and reported much prior in point of time.

18. I am, therefore, inclined to exercise the discretion in favour of the applicants.

19. Hence, the following order.

ORDER

1] In the event of arrest in C.R. No.386 of 2023 registered with Daund police station, the applicants be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

2] The applicants shall cooperate with the investigation and attend Daund police station, on 23rd, 25th and 26th October, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

3] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

4] The applicants shall regularly attend the proceedings before the jurisdictional Court.

5] The Application stands disposed.

6) Interim Application also stands disposed.

7] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)