



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3325 OF 2023**

Sudhir Baban Gawade and Anr.	...	Applicants
versus		
The State of Maharashtra	...	Respondent

Mr. Prashant S. Hagare, for Applicant.
Mr. S.H.Yadav, APP for State.
Mr. Tushar Bhor, PSI, Malegaon Police Station, Pune (R) present.

CORAM: N.J.JAMADAR, J.

DATE : 30 NOVEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.560 of 2023 registered with Malegaon Police Station, Pune Rural for the offences punishable under Sections 327, 143, 147, 149, 323, 504, 506 of the Indian Penal Code and Sections 3 read with Section 25 of the Arms Act, 1959.
3. The first informant had contested the election to the post of Sarpanch of Village Panchayat Medad. On 4 November 2023, the applicants and the other members of the rival panel were found canvassing. When the first informant asked them not to canvass as the Model Code of Conduct became operative, the applicants and the co-accused allegedly abused and assaulted the first informant. Co-accused Nitin Mohite gave a blow on his chest. The applicant Prakash More had divested him

of gold ornaments. The applicant Sudhir threatened the first informant out of his life by pointing out a pistol which he had concealed near his waist.

4. The learned Counsel for the Applicant submitted that the instant FIR came to be lodged as a counter blast to the FIR lodged by Mr. Prashik Kamble, of the accused party. In fact, the members of the accused party were assaulted and abused by the informant party in prosecution of the common object of the unlawful assembly. Mr. Nitin Mohite was assaulted by means of an scythe.

5. Learned APP submitted that on account of election dispute, members of the two groups had a fight. However, the role attributed to the applicant in the instant case, deserves to be taken into account. The applicant Prakash More divested the gold ornaments and the applicant Sudhir threatened the first informant out of his life by pointing out a pistol and, therefore, the applicants do not deserve exercise of discretion.

6. Prima facie, it appears that in respect of one and the same occurrence, two versions have been reported. A member of the accused party had lodged FIR prior in point of time. The genesis of the alleged offences appears to be in the election dispute. In the context of the nature of the accusation, which appeared to have been made in the backdrop of the sur-charged atmosphere, the custodial interrogation of the applicants does not seem to be warranted to facilitate further investigation. So far as the aspect of recovery of the gold ornaments, which the first informant was

allegedly divested, it would be suffice to note that the appearance of the accused before Investigation officer during the course of investigation shall be construed as the custody for the purpose of Section 27 of the Indian Evidence Act, as clarified by the Supreme Court in the case of **Sushila Aggarwal and Ors. V/s. State (NCT of Delhi) and Anr.**¹

7. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Sudhir Baban Gawade and Prakash Sukhdeo More in connection with C.R.No.560 of 2023 registered with Malegaon Police Station, they be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to Malegaon Taluka Station on 7th, 8th and 9th December 2023 in between 10.00 a.m. to 1.00 p.m., and thereafter, as and when directed.

(iii) The appearances of the applicants before the Investigation Officer shall be construed as the custody for the purpose of Section 27 of the Indian Evidence Act.

(iv) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the prosecution

1 AIR 2020 SC 831

witnesses or any of the persons acquainted with the facts of the case.

(v) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(vi) The application stands disposed.

(N.J.JAMADAR, J.)