



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

CRIMINAL APPLICATION (ABA) NO.546 OF 2023

Mohd. Bismillah Khan Mohd. Buland Khan and others

Vs.

State of Maharashtra, through PSO, PS Balapur, Dist. Akola

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

Court's or Judge's orders.

Shri S.V. Sirpurkar, Advocate for applicants.
Shri I.J. Damle, APP for non-applicant/State.
Shri D.N. Mudgale, Advocate for informant (Assist to
prosecution).

CORAM : M.W. CHANDWANI, J.

DATE : SEPTEMBER 26, 2023.

The applicants are apprehending their arrest in connection with Crime No.390/2023 registered with Police Station, Balapur, District Akola for the offences punishable under Sections 326, 324, 143, 147, 148 and 149 of the Indian Penal Code.

2. Heard learned counsel for the applicants, learned APP for the non-applicant/State as well as learned counsel for the informant. I have gone through the case diary.

3. It is contended on behalf of the learned counsel for the applicants that there are counter First Information Report (FIR) by the both parties to the incident. The FIR lodged by the applicant no.2 is prior in time i.e. lodged on 15.06.2023 at 08.21 am, whereas the FIR lodged in the present crime on the next day of the incident. According to

him, initially an offence under Section 324 came to be registered and after 21 days only on the allegation of dislocation of shoulder the offence under Section 326 is added in this crime. It is stated that the informant and other co-accused have obtained anticipatory bail in the Crime No.386/2023 registered against them by the present applicants. Whereas, the application of present applicants have been rejected by the learned Additional Sessions Judge. He submits that the applicants have also sustained grievous injuries in the said incident. According to him, the applicants deserve for anticipatory bail.

4. Per contra, learned APP for the State submits that the applicants went to the field of informant and assaulted by means of knife, axe, iron pipe and wooden stick, wherein the informant and his companion sustained grievous injuries. According to him, the applicant no.1 is having antecedents, therefore, sought rejection of the bail.

5. Having heard the learned counsel for the applicants and learned APP for the State and having gone through the case diary, it transpires that the dispute arose on account of erection of gate on the agricultural field. The incident occurred at 1.00 am at the agricultural field in which both parties sustained injuries. There are counter FIR against each other. It appears that the informant and his son have already been discharged from the hospital. Except dislocation of bones all other injuries are simple in nature. In

this incident, the applicants have also sustained injuries. The applicant nos.2 to 4 do not have antecedents. They are having fixed place of abode. There is no likelihood that they will flee away from justice. A case is made out for exercising discretion in favour of the applicant nos.2 to 4. So far as anxiety put forth by the learned APP regarding recovery of weapon is concerned, in view of judgment in *Sushila Aggarwal and Others v. State (NCT of Delhi)* And Another reported in (2020) 5 SCC 1, the period of attendance of the applicant nos.2 to 4 before Investigating Officer be treated as deemed custody within the meaning of Section 27 of the Indian Evidence Act. So far as the applicant no.1 is concerned, perusal of the crime chart filed on record shows that the applicant no.1 is having antecedents. Even case diary also shows that the knife has been used by the applicant no.1. In view of above, the following order is passed.

ORDER

- i. The criminal application is partly allowed.
- ii. The criminal application of applicant no.1 is hereby rejected.
- iii. In the event of arrest in Crime No.390/2023 registered with Police Station, Balapur, District Akola for the offences punishable under Sections 326, 324, 143, 147, 148

and 149 of the Indian Penal Code, 1860, **applicant nos.(2)- Ajaj Hussain Mohd. Buland Khan, (3) Adil Rashid Khan Mohd. Buland Khan and (4) Tausif Khan Bismilla Khan**, be released on anticipatory bail on furnishing P.R. Bond in the sum of ₹25,000/- each with one solvent surety of like amount.

iv. The applicant nos.2 to 4 shall attend concerned Police Station on every Friday between 10.00 am to 12.00 noon for next four weeks and thereafter as and when called for investigation purpose and shall cooperate in the investigation, till filing of the charge-sheet.

v. The applicant nos.2 to 4 shall furnish their cell phone numbers and addresses with address proof.

vi. The applicant nos.2 to 4 shall not repeat the same offence or tamper with the prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

vii. In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both sides.

With this, the application is disposed of.

JUDGE

Wagh