



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (ABA) NO. 580 OF 2023

Mujebur Rahman Shaikh Habib and Ors.

Vs.

State of Maharashtra, Thru. PSO, PS Achalpur, Tah. Achalpur, Dist. Amravati.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.P. Bhandarkar, Advocate a/w Mr. G.B. Mate,
Advocate for applicants.
Mr. I.J. Damle, APP for non-applicant/State.

CORAM : M.W. CHANDWANI, J.

DATE : 20.09.2023.

Apprehending their arrest in connection with Crime No.253/2023 registered with Police Station Achalpur, District – Amravati, for the offences punishable under Sections 323, 326, 504 read with Section 34 of the Indian Penal Code.

2. Heard the learned counsel for the applicants as well as the learned APP appearing for the non-applicant/State.

3. It is contended on behalf of the learned counsel for the applicants have not committed any offence, the complainant party was aggressor.

According to him, the assault was made by complainant party and they assaulted the applicants with knife and iron rods. According to him, applicant No.3- Abdul Hamid was assaulted and the applicant No.1 lodged the FIR against the complainant party and therefore, on his complaint, offence under Section 307 of the Indian Penal Code, came to be registered against the complainant, who assaulted the applicants.

4. It is submitted that even prior to the incident the matter was reported to police about the threatening given by the informant. The FIR lodged by the applicant No.1 is first in point of time and on next day concocted story has been created and false complaint has been lodged. According to him, even injury received by one Sayyed Rafiq Sayyed Ahmad is not grievous injury. Therefore, he seeks anticipatory bail.

5. Per contra, learned APP appearing for the State submits that there was dispute over height of the wall of lawn and all the applicants assaulted the uncle of the informant who sustain fracture in his leg. The offence is serious and custodial

interrogation of the applicant is required to seize the articles. Hence, objected the bail.

6. Perusal of the case diary transpires that lawn of the applicant No.1 is adjacent to the house of the informant. From the lawn of the applicant's bathroom of the informant is visible, therefore, there was dispute on the count of increasing the height of wall of lawn. As per prosecution story, on 24.07.2023, at about 01:00 p.m., when the informant was at her home, all three accused came there and started abusing. The applicant No.1 unleashed iron blow on his foot. All three accused assaulted uncles of the informant by iron pipes. Sayyad Wasim sustained fractured in his leg. Therefore, on complaint of the complainant, the aforesaid offence is came to be registered against the applicants.

7. It apperst that there are counter FIRs. At the instance of applicant No.1, immediately lodged report on 24.07.2023 vide Crime No.252/2023 and offence under Section 307, 143, 147, 148 and 149 of the Indian Penal Code came to be registered against the informant and his family members. Whereas in the present case, the FIR has been lodged on

25.07.2023 at about 01:13 a.m. It appears that from the complaint lodged by the applicant No.3 that from informant side there were six people who came and abused the applicants. Uncle of informant Sayyed Wasim was carrying knife in the incident Sayyed Wasim unleashed knife blow to applicant No.3 on the vital part i.e. on neck. Wherein he sustained bleeding injury. He was also assaulted by iron rod. Considering the injury on vital part offence under Section 307 of the Indian Penal Code along with allied offence came to be registered against the informant and his relatives. It is also transpired that both the parties had also lodged counter complaints over the incident occurred in the morning which were turned as non-cognizable complaints.

8. It appears that there was fight between two groups on account of height of the wall. Wherein both the parties sustained injuries. The informant's uncle used the weapon like knife and unleashed blow on vital part of body of the applicant. The FIR lodged by the applicant No.1 is earlier point of time. Even the applicant had lodged non-cognizable complaint prior to the incident regarding threats given by the informant. Rather, the applicant No.3 sustained injuries on vital part

and offence of serious nature have been registered against the informant and his relatives. All these prima facie shows that informant and his relative were actively involved in the fight. Who was aggressor is a matter of trial. Considering above aspect and the fact that there is no likelihood of the applicant would flee away from justice, a case is made out for exercising discretion in favour of applicant on certain condidtions.

9. So far recovery of weapons from the applicant is concerned there presence pursuant to this order before Police authority be treated as a custody within the meaning of Section 27 of the Indian Evidence Act. Hence, I pass the following order :

ORDER

The application is allowed, in the event of arrest, the applicants shall be released on bail on furnishing PR bond of Rs.25,000/- each with one solvent surety in the like amount in Crime No.253/2023 registered with Police Station Achalpur, District – Amravati for the offences punishable under Sections 323, 326, 504 read with Section 34 of the Indian Penal Code.

2. The applicants shall attend concerned Police Station on every Tuesday for four weeks between 10:00 a.m. to 12:00 a.m. and thereafter, as and when called by the investigating officer for investigation purpose.

3. The applicants shall not threaten or induce the witnesses or tamper the evidence. The applicants shall cooperate in the investigation.

4. Needless to mention that observations made in this order are prima facie. The trial Court should not get influence by the observations made in this order.

5. The application is disposed of.

JUDGE