

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, NASHIK,
AT – NASHIK.
(Presided over by Mr. M. H. Shaikh)

CNR NO.MHNS010001652022

Criminal Bail Application No.55 of 2022



1. Dnyanewhar Pandurang Khalkar
2. Sopan Pandurang Khalkar,
3. Umesh Sukhdeo Khalkar,
4. Balu Sukhdeo Khalkar,
5. Vaibhav Dnyaneshwar Khalkar,
6. Ramesh Gangadhar Khalkar,
7. Prasad Dnyaneshwar Khalkar,
8. Tukaram Digambar Khalkar,
9. Atmaram Babanrao Khalkar ... Applicants.

V/S

State of Maharashtra
Through : Nashik-Road Police
Station (C.R. No.I-09/2022) ... Respondent.

Appearance : Ld. Advocate Shri. Pravin R. Shejwal alongwith Adv. Shri. Rajesh Avhad for Applicants.
Ld. APP Smt. Aparna Patil, for State/Respondent.
Ld. Advocate Shri. Sujit Borade for complainant.

ORDER BELOW EXH. NO.1
(Delivered on 21th January, 2022)

1. This is an application filed under Section 438 of Criminal Procedure Code for grant of pre-arrest bail in C. R. No. I-9/2022 registered with the respondent Nashik Road Police Station for an offence punishable under Sections 324, 326, 504, 506, 143, 147, 148 & 149 of the Indian Penal Code.

2. Perusal of the F.I.R. reflects that the incident occurred on 06.01.2022 at 1:30 p.m. in front of the house of the complainant. It is alleged in the FIR that, as the complainant did not withdraw the Civil Appeal filed against the applicants, therefore, the applicants were abusing the complainant. The complainant asked them not to abuse, on this quarrel took place and these applicants assaulted the complainant and her relatives, who came to rescue her with iron rods, sticks etc. and injured the complainant and the witnesses. The matter came to be reported to the Police.

3. It is the case of the applicants that, they are innocent and they are falsely implicated in this case. Civil Suit was filed against the applicants and the said Civil Suit came to be dismissed. Appeal filed before the Hon'ble High Court also came to be dismissed. Therefore, the cause mention in the FIR that, as the complainant did not withdraw the Appeal, therefore, the incident occurred is totally false. All the family members are made accused in the said Crime just to take revenge as the civil litigation is lost by the complainant in the Court of Law. Initially, the offence was registered under Section 324 and other Sections of IPC. Thereafter, Section 326 of IPC came to be added at the instance and pressure of the complainant by the Police. Applicant No.5, 6 and 9 came to be arrested and MCR was taken on the first date by the IO and when the bail application was moved by these applicants, the complainant intervene in the matter and submitted to the Learned JMFC that the police are going to add Section 307 of IPC, therefore, the Learned JMFC postponed the hearing of the bail application of these applicants and granted interim bail to them. The entire investigation is completed on the day when the incident occurred because the applicants had given all the details of the incident to the IO. Therefore, the custodial interrogation of these applicants is not necessary with the police. Therefore, prayed to allow the application.

4. Respondent filed the reply vide Exh.6 and objected to allow the application. The grounds for rejection of the application are that, the offence is alleged that of serious in nature. The injury certificate of the injured persons is yet to be collected. The victim Rajendra Khalkar is admitted in the hospital. The Muddemal hockey stick, sticks, iron rod, plastic pipe and stump are to be seized. The applicants are seen assaulting the complainant and the injured persons in the CCTV footage. The applicants, complainant and the witnesses all are resident of the same area, therefore, there is possibility that again grave incident may occur. Investigation is in progress. Therefore, prayed to turn down the application.

5. In this matter, complainant appeared through her Learned Advocate and sought permission to assist the Learned APP and make submissions on behalf of the complainant. Permission was granted to the Learned Advocate for the Complainant to assist the Learned APP and make short oral submissions.

6. Heard Ld. Advocate for applicants, Ld. A.P.P. for State and Learned Advocate for Complainant. Perused the police-papers produced for inspection of this Court. So also gone through the authorities relied by Learned Advocate for applicants i.e. - Ambadas Kisan Bhagwat and others V/s. State of Maharashtra, reported in ALL MR (Cri) 2015, 721 and Madan Balasaheb Pingale and others V/s. State of Maharashtra, in Anticipatory Bail Application No. 133 / 2020 decided by the Hon'ble Bombay High Court on 29.05.2020.

7. Upon hearing and going through the material placed on record, what can be gathered is that initially the offence under Section 324 and other Sections of Indian Penal Code came to be leveled against the applicants and thereafter, it seems that Section 326 of the IPC came to be added by the

police. From the arguments of both the sides what can be gathered is that, there was a free fight between applicants and the side of the complainant. It seems that, there is civil dispute between the parties as regards the land. It seems that the civil suit filed by the side of the complainant came to be dismissed, against which the Appeal came to be filed before the District Court and against the Order of the District Court, challenge was given in the Hon'ble Bombay High Court and the Hon'ble Bombay High Court also turn down the challenge of complainant side, therefore, what can be gathered is that the dispute between the parties was a family dispute as regards land, who are the relatives of each other. The Non-cognizable cases are filed by the parties with the police. Admittedly, the incident had taken place wherein the complainant Savita and Rajendra had sustained injuries and they came to be admitted in the hospital and so also, the injuries were caused to some of the applicants of this case. Therefore, presence of these applicants on the spot was there on the date of incident. Now whether the offence under section 326 of IPC is attracted or not. Prima-facie, if we see, one will find that, in the injury certificate which has been collected by the Investigating Officer during the investigation, one will find that one injury is grievous and other are simple in nature to Rajendra Khalkar whereas as far as Shobha and Shridhar are concerned, the injuries are in simple in nature. But the fact is that, the Investigating Officer has not collected the injury certificate of Complainant Savita. Perusal of the photographs, which are collected during the course of investigation and also filed by the Learned Advocate for the Complainant reflects that, the said Savita had sustained injuries on her forehead, face and on the skull and it is argued that she sustained fracture injury. As far as Rajendra is concerned, he has sustained fracture at his right hand and he is required to be operated. The injury certificate of Savita is yet to be collected. There was free fight between the parties as they have sustained injuries of grievous and simple in nature.

8. Now, the question is about whether the custodial interrogation of the applicants is necessary with the police. In that regard, it is the ground of objection raised in the Reply by the Respondent that the weapons are to be recovered from the applicants. CCTV footage shows that, these applicants are involved in the incident. Further he has objected on the ground that, if they are enlarged on the bail, similar offence may occur in future. As far as these grounds are concerned, the Court finds that, for recover of the weapons, custodial interrogation is necessary, without their being a custody of the applicants, weapons cannot be recovered. Moreover, incident had taken place and at whose instance, the incident had taken place is required to be investigated and also interrogation with each applicants is necessary. The documents placed on record reflects that the said Savita, who is complainant suffered injury of skull and Rajendra on his right hand, therefore, there are grievous injuries to the said Savita as well as Rajendra. As far as the authorities relied by the Learned Advocate for the applicants that there is free fight then Court should grant interim bail by imposing certain conditions. I have gone through the authority of the Hon'ble Bombay High Court, in that authority, the injuries were of simple in nature. Therefore, said authority cannot be said to be applicable in the case in hand. As far as second authority of the Hon'ble Bombay High Court, which is relied, in that authority there was a recovery to be made and the other accused persons were released on bail. In our case, in hand, investigation is at a primary stage, and therefore, considering prons and cons of this matter, this Court finds that the balance is to be made between the right of the Investigating Officer to investigate the matter and to collect the evidence and so also the liberty of the applicants. In the result, this Court finds that, the custodial interrogation of the applicants is required with the respondent. In the result, application fails, therefore, following order is passed.

ORDER

1. Criminal Bail Application No.55/2022 stands rejected.
2. Inform the Respondent accordingly.
3. At this stage, Learned Advocate for applicants submits that, the interim protection granted by this Court, be continued for a period of two weeks to carry the matter before the Hon'ble High Court, to which Learned APP as well as Learned Advocate for the complainant objected by saying that, there is no provision in Criminal Procedure Code to extend the interim protection granted by this Court. However, this Court finds that, applicants have every right to challenge the order of this Court. There is no bar to extend interim protection in Criminal Code of Procedure. Therefore, interim protection is extended for a period of one week only.
4. Certified copy be expedited.
5. Application stands disposed off accordingly.

Place : Nashik.
Date : 21.01.2022

(M. H. Shaikh)
Additional Sessions Judge, Nashik.