

Cri.Bail Appln. No.1159/2022
Cri.Bail.Appln.No.1165/2022,
Cri.Bail.Appln.No.1166/2022,
Cri.Bail.Appln.No.1167/2022,
Cri.Bail.Appln.No.1171/2022,
Cri.Bail.Appln.No.1172/2022,
Cri.Bail.Appln.No.1173/2022.

MHJN010028752022 MHJN010028892022 MHJN010029022022



MHJN010029032022 MHJN010029042022 MHJN010028912022



MHJN010028902022



COMMON ORDER PASSED BELOW EXH.1 IN CRIMINAL BAIL APPLICATION No.1159/2022, CRIMINAL BAIL APPLICATION No.1165/2022, CRIMINAL BAIL APPLICATION No.1166/2022, CRIMINAL BAIL APPLICATION No.1167/2022, CRIMINAL BAIL APPLICATION No.1171/2022, CRIMINAL BAIL APPLICATION No.1172/2022, CRIMINAL BAIL APPLICATION No.1173/2022.

. In order to avoid repetition and for the purpose of convenience, all these bail applications are disposed of commonly.

02. All these seven bail applications are preferred by the applicants/accused therein as they are apprehending arrest in crime no.650/2022 for an offences punishable under sections 143, 147, 148, 307, 336, 120-B, 427 and 506 r/w section 149 of the Indian Penal Code (hereinafter referred to as the “I.P.C.”) and under section 25, 3 and 4 of the Arms Act, 1959 registered with police station Taluka Jalna and hence, they have preferred these applications as per the provisions of section 438 of the Criminal Procedure Code (in short “Cr.P.C.”) for grant of anticipatory bail.

03. On the basis of report lodged by one Ankit Abhaykumar Abad, crime no.650/2022 for an offences punishable under sections 143, 147, 148, 307, 336, 120-B, 427 and 506 r/w section 149 of the Indian Penal Code (hereinafter referred to as the “I.P.C.”) and under section 25, 3 and 4 of the Arms Act, 1959, is registered with police station Taluka Jalna on 03.10.2022 against the several persons inclusive of the present applicants. It is alleged in the F.I.R. that, on 03.10.2022, at around 4.34pm when the informant was driving to his office in

his vehicle, he found that over the land survey no.554, the board displaced over the land was destroyed, also the CCTV and the office were damaged and at that time around 50 to 60 persons attached him, holding swords and hockey sticks in their hands and they followed the informant and damaged his car and some of the accused persons were holding guns in their hands, wherein, one of the applicant i.e. advocate Deepak Kakade asked some other people who were holding the swords to come near the car and the informant's car was damaged with pelting of stone and three gun shots were fired towards the car. It is also alleged that advocate Deepak Kakade was instigating for firing. On the basis of said report, the crime was registered. During the investigation, some persons were arrested and on perusal of the case-diary, nothing has been shown to be seized from their possession.

04. I have perused all the bail applications. In almost all bail applications, several documents have been placed on record by each of the applicants. The Investigating Officer has been called for along with case-diary. I have perused the case-diary. The prosecution is also assisted by the learned advocate Shri.

Wagh, who has also filed the objection on record. I have gone through all the written objections. I have heard all the learned advocates for the applicants viz. Shri.S.C.Arora, Shri.N.D.Runwal, Shri. G.M.Jakkalwar, Shri.S.E.Siddiqui and Shri.U.A.Parsuwale. I have also heard learned In-charge D.G.P. Shri.B.V.Ingle and learned advocate Shri.Wagh, who is assisting to the prosecution. Investigating Officer is also been heard.

05. Perused the F.I.R. At the very outset of the present case, the learned advocate who is assisting to the prosecution Shri.Wagh has fairly conceded before the Court that, upon going through the F.I.R., itself there is some sort of exaggeration in it. On perusal of the spot panchnama and upon hearing the Investigating Officer, he has also submitted that from the spot of incident, nothing material has been found to prima-facie show that there was use of any gun or there was any use of gun shot firing. From the spot, only the stone has been seized and the prima-facie inspection of the vehicle shows that certain damage has been caused due to pelting of the stone, as only pieces of stones from vehicle and not the bullets or its shells are found.

06. Considering this, I have gone through the material on record and it is not disputed that a long standing civil dispute with regard to land survey no.554 situated at Mantha Road, near D-Mart, Jalna is going on between the parties and some of the applicants are representing the litigants and some of the applicants/advocates have also entered into certain agreement in the nature of Development-agreement etc.

07. Considering the aforesaid facts, if the F.I.R. is looked into, it is stated in the F.I.R. that one of the applicant/accused Deepak Kakade who is practicing lawyer has asked to the other persons to fire on the informant. This has been heard by the informant while he was inside the car. Now, this applicant/accused advocate Deepak Kakade has filed an affidavit before the Court that on the date of alleged incident and at the time of incident, he was in the Court premises. Regarding this affidavit, the Investigating Officer after verifying the CCTV footage produced by him, has fairly conceded before the Court that he is seen in the Court premises at the relevant time. Similar is the case with advocate/applicant Vijay Ghule-Patil. So, regarding both these applicants, the Investigating

Officer has fairly conceded that upon verification of the CCTV footage of the Court premises on the date of incident, they were in the Court. Some of the applicants Sandhya Daga, Rajendra Daga and Roshan Daga have also filed an affidavit stating that they were at Hingan-Ghat, District: Wardha. Another applicant Chandan Motwani is also stating the same fact on affidavit and produced on record in a pen-drive, the CCTV footage about his presence in his house on the date and time of the incident.

08. On perusal of the documents placed on record, it shows that the informant and the other persons are litigating the title with regard to land survey no.554, wherein, advocate of Sandhya Daga who was the original owner of the land has sold land to third party under some sale-deeds. One of the applicant/advocate Deepak Kakade is shown to be represented said Sandhya Daga in several civil matters right from District Courts up to Hon'ble High Court and on the date and time, he was busy in arguing one of the miscellaneous application with regard to the same land in the District Court. Several copies of previous F.I.R. has also been placed on record, which shows that regarding the said land, several F.I.Rs. and counter F.I.Rs. have

been filed by the applicant's party against the informant's party and vice-versa.

09. Be that as it may, in the present alleged incident, no one is injured. The Investigating Officer himself has conceded that after verifying CCTV footage, he found three of the applicants in the Court premises at the relevant time, then there is no doubt about the fact that the said F.I.R. is an exaggerated one. No doubt, some incident might have been occurred, but considering the nature of the F.I.R., the manner in which it is registered, the only fact which needs to be seen is whether custodial interrogation of the applicants is required or not. It is pertinent to note that seven persons were arrested and nothing has been seized from their possession. While arguing on this application, the learned defence counsel has placed the reliance on the case of **Siddharam Satlingappa Mehetre Vs. The State of Maharashtra and others reported in (2011) 1 Supreme Court Cases 694**, wherein, it was held by the Hon'ble Supreme Court that,

“Anticipatory bail - Role of, in protection of right

to personal liberty – Sense in which S.438 CrPC is described as being “extraordinary”, clarified – Held, S.438 CrPC is not extraordinary in the sense that it should be invoked only in exceptional or rare cases – A great ignominy, humiliation and disgrace is attached to arrest – In cases where court is of considered view that accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted, which after hearing Public Prosecutor, should ordinarily be continued till end of trial.”

I have carefully gone through the aforesaid ruling and I rely on the same as it is applicable to the present case, because, the complaint filed against the accused needs to be thoroughly examined including the aspects whether the informant has filed a false or frivolous complaint on the earlier occasion. In the present case there appears to be a long standing civil dispute between the accused and the informant. On perusal of the case-diary, there is nothing to indicate that custodial interrogation is necessary of the applicants and giving attendance to police station with certain conditions would suffice the purpose.

10. The learned defence counsel has further placed

reliance on the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others reported in (2014) 2 Supreme Court Cases 1**, wherein it was held that,

“FIR in cognizable case – Registration of – Whether is mandatory or police officer has option, discretion or latitude of conducting preliminary inquiry before registering FIR – Mandatory registration of FIR on receipt of information disclosing a cognizable offence as the general rule – Situations/ cases in which preliminary inquiry is permissible – Scope of, and safeguards to be followed in cases where such preliminary inquiry (time-bound) is permissible.”

I have gone through aforesaid ruling. In the said ruling in para no.120.6, it is also observed that,

“As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/

laches in initiating criminal prosecution, for example over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

The learned advocate Shri.Wagh who is assisting to the prosecution while objecting the bail applications has submitted that the accused no.1, 3, 4, 5, 6, 12 and 15 do have not any inimical relations with the informant and they have acted upon the other accused, who have hatched criminal conspiracy to commit the murder of the informant. He has further submitted that the conspiracy is hatched in secretly and therefore unless these persons are taken into the custody, there will be no progress in the investigation. On perusal of the case-diary, specifically at the spot of incident, only one stone and a motorcycle appears to have been seized. Prima-facie from the seizure of the said four wheeler vehicle, there is nothing to indicate that there is any use of any gun firing on the vehicle and it only shows about pelting of stones. Most of the

applicants have filed their affidavits and have also taken the plea of alibi. It is found that after giving interim protection, the applicants have cooperated the investigating agency and one of the applicant Manish Bagdiya has filed copy of attendance register of the police station. All the applicants argued that they are ready to cooperate with investigating agency, if enlarged on bail. The Investigating Officer has also submitted that from the CCTV footage, the identity of the actual persons is not clear and therefore, at this stage, there is no evidence showing presence of the applicants on the spot of incident as alleged in the complaint.

11. Even otherwise, the learned In-charge D.G.P. Shri. B.V.Ingle has given the details on record showing that on 04.10.2022 only one motorcycle and one stone is seized. With the help of chemical analyser, the pieces of stone were collected from the vehicle and the broken glasses shows about the pieces of stone and hand wash of the accused Shrikant Tadepkar, who is already in custody, is sent to the Chemical Analyser. Moreso, the vehicle scorpio bearing R.T.O. registration no.MH-21-BF-

8333 is seized and statement of one witness viz. Anand Abad is recorded. Thus, the investigation is in progress and under given circumstances regular attendance to police station will be sufficient for further progress in investigation.

12. No doubt, the offence is serious and the allegations of using dangerous weapons, however, the applicants have made out the prima-facie case by filing their affidavits on record of showing the fact that at the relevant time, they were not on the spot. Regarding other allegations like conspiracy etc., is concerned, can very well be carried out and for that purpose, the custodial interrogation of the present applicants is not necessary. The applicants on these aspects has placed the reliance of two rulings of Hon'ble Bombay High Court and Bench at Aurangabad and one ruling of Hon'ble Bombay High Court, Appellate Jurisdiction i.e. Bandu s/o Sahebrao Jadhav and others Vs. The State of Maharashtra and another reported in Anticipatory Bail Application no.215 of 2022, Madhav @ Devidas Digambar Jamdade Vs. The State of Maharashtra reported in Anticipatory Bail Application no.451 of 2022 and Ananda Mayappa Kurade Vs. The State

of Maharashtra reported in Anticipatory Bail Application no.1341 of 2022. I rely on said rulings as is applicable to present case. In the result, in my opinion, all these bail applications can be allowed and hence, I pass following order.

ORDER

- 1) Criminal Bail Application No.1159/2022, Criminal Bail Application No.1165/2022, Criminal Bail Application No.1166/2022, Criminal Bail Application No.1167/2022, Criminal Bail Application No.1171/2022, Criminal Bail Application No.1172/2022, and Criminal Bail Application No.1173/2022 are allowed.
- 2) In the event of arrest, applicant/accused **Deepak Madhavrao Kakade** in Criminal Bail Application No.1159/2022, applicant/accused **Manish Pannalal Bagdiya** in Criminal Bail Application No.1165/2022, applicant/ accused no.1 **Farooque s/o Sadik Tundiwale** and accused no.2 **Ibrahim @ Ibbu Usman Parsuwale** in Criminal Bail Application no.1166/2022, applicant/ accused **Chandan Bhagatram Motwani** in

Criminal Bail Application No.1167/2022, applicant/ accused **Vijay s/o Vitthalrao Ghule-Patil** in Criminal Bail Application No.1171/2022, applicant/ accused **Sachin s/o Madhukarrao Mulay** in Criminal Bail Application No.1172/2022, applicant/ accused no.1 **Sandhya w/o Rajendra Daga**, applicant/accused no.2 **Rajendra s/o Shobhagmalji Daga** and applicant/accused no.3 **Roshan s/o Rajendra Daga** in Criminal Bail Application No.1173/2022, respectively at the hands of police station Taluka Jalna in crime No.650/2022, under sections 143, 147, 148, 307, 336, 120-B, 427 and 506 r/w section 149 of the Indian Penal Code (hereinafter referred to as the "I.P.C.") and under section 25, 3 and 4 of the Arms Act, 1959, each of them shall be released on bail, on each of them executing personal bond of Rs.25,000/- (Rs. Twenty-five thousand only) each with one or more sureties of like amount each.

- 3) All the applicants/accused shall attend police station Taluka Jalna, every Monday, Wednesday and Friday between 11.00a.m. to 1.00p.m., till filing of the charge-sheet and shall co-operate with the Investigating Agency.
- 4) All the applicants/accused shall not tamper with the evidence.

- 5) All the applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to the police officer.
- 6) All the applicants/accused shall not leave India, without prior permission to this Court, till the case is disposed of.
- 7) All seven applications are disposed of.

Date- 17/10/2022

(Kishore M.Jaiswal)
Addl. Sessions Judge, Jalna

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original.

Name of Stenographer : P.S.Tayade
Name of the Court : Court of Addl. Session Judge, Jalna
Date of PDF : 17/10/2022

Sd/-
(P.S.Tayade)
Stenographer (Grade-I)