

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO. 858 OF 2015
WITH
CRIMINAL APPLICATION NO. 503 OF 2015 IN ABA NO. 858 OF 2015**

Dipak Pandurang Raut	... Applicant
Vs.	
The State of Maharashtra	... Respondent
And	
Nagesh Haribhau Akkalkote	... Applicant/Intervener

Mr. R.B. Raghuwanshi i/b. Mr. V.V. Purwant, Advocate for the applicant.
Mr. Arfan Sait, APP for the respondent/State.
Mr. Abhijit Kulkarni i/b. D.D. & Abhijit Associates, Advocate for the applicant/intervener.
I.O. Mr. S.I. Chaus, P.I., Barshi Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JULY 7, 2015**

P.C.:

Criminal Application no. 503 of 2015 filed by the original complainant for intervention is allowed.

2. Criminal Application No. 858 of 2015 is moved for pre-arrest bail, as the applicant/accused is facing charges under sections 307, 329, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code and Section 25(2) of the Arms Act in C.R. No. 84 of 2014 registered with Barshi Police Station, District Solapur. The complaint is registered at the instance of Nagesh Akkalkote, who was injured.

3. The applicant/accused and complainant belongs to two different

political parties and there is dispute between them. On 1st August, 2014 in the evening when complainant and his friend Pankaj Shinde was proceeding on a motorcycle, suddenly applicant/accused and other three accused, armed with weapons like sword and sticks, arrived there on the motorcycle and assaulted the complainant. They threatened Pankaj Shinde not to intervene in the matter. When the accused persons were hitting the complainant, he started running and after that he fell down and became unconscious. He was shifted to the hospital and treated. After four days, he gave the complaint.

4. The learned counsel for the applicant/accused has submitted that due to political rivalry, the applicant was falsely implicated in this case. The applicant/accused belongs to other political party. He had moved one application to the Collector against the complainant on 11th July, 2014 under section 44 of the Municipal Council Act pointing out that the complainant has illegally encroached on the land, pursuant to which, the complainant, who was also corporator like applicant/accused, was disqualified on 17th October, 2014. The learned counsel submitted that there is continuous hostility between the applicant/accused and complainant. The learned counsel submitted that the incident has taken place on 1st August, 2014 and FIR was given on 4th August, 2014, hence there is a delay of 4 days. The learned counsel further submitted that the custody of applicant is not required, as the police have seized all the

weapons from the co-accused, who were arrested in this offence. He produced two certificates which were given by the school, where the applicant/accused was working as Assistant Teacher in Nutan Secondary and Higher Secondary School at Devlali, Taluka Bhoom, Dist. Osmanabad, that he had attended the school. He also produced one certificate given by Municipal Council, Barshi that the applicant/accused, being a corporator, had attended the meetings of the Standing Committee on various dates during the last year. He submitted that the police in fact did not want to arrest the applicant, as his custody is not required. Due to political pressure only, the police wants to arrest the applicant.

5. Learned APP and learned counsel for the intervener both opposed the Application, as applicant/accused is a main accused. Learned APP submitted that the charge sheet is not filed by the Investigating officer, as custody of the applicant/accused is required. It is further submitted by the learned APP and learned counsel for the intervener that on the same day, a matter was posted on the facebook against the complainant. Learned APP further relied on the injury certificate of the complainant.

6. Perused all the documents produced by both the sides. On perusal of the FIR and the injury certificate, it *prima facie* appears that the applicant/accused was involved in the assault. The applicant was holding sword and he assaulted complainant on his head. The injury certificate

discloses that there were two grievous and four simple injuries on his body. The injury caused to the head is a fracture of parietal bone. Considering the nature of attack and offence committed, it is not a case to grant pre-arrest bail.

7. In this case, one important factor is required to be mentioned that from 4th August, 2014 till today, the Investigating officer has not arrested the applicant/accused but other accused were arrested and weapons were recovered from them. It appears *prima facie* that the dispute has taken place out of political and personal rivalry. Similarly, it is not a false implication. The certificate produced by learned counsel for the applicant/accused *prima facie* discloses that applicant/accused was very much available in the city and he had attended the school as well the meetings of the Municipal Council. The complainant and applicant/accused both are corporators in Barshi Municipal Council. A query was made to the learned APP as to why other accused were arrested but this applicant/accused, who has attributed specific role and it is *prima facie* corroborated with the injury certificate, was not arrested? The learned APP informed the Court, on instructions received from the original Investigating Officer who is present in the Court, that he wanted to arrest the applicant/accused but could not arrest him because he was helpless due to continuous political pressure. It is painful to accept this Explanation but it appears true. If an accused who is politically influential

manages to avoid arrest, it creates an impression in the Society that influential person can escape from the clutches of law. It is harmful to the public faith in the authority of the police and the judicial system. The Court has to deal with such situation strictly as per the provisions of law under section 438 of Cr. P.C. If *prima facie* involvement of such person in the offence is made out and if it is evident that he was successful in avoiding arrest for sometime by using pressure, then though there is a time gap and if the offence is grave and serious, then pre-arrest bail is to be rejected. Hence, the Application for anticipatory bail is rejected.

(MRS.MRIDULA BHATKAR, J.)