

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAILAPPLICATION NO. 141 OF 2015

1. Ganesh Sadashiv Bhosale	)	
2. Sadashiv Janardhan Bhosale	)	Applicants
vs.		(orig. accused)
The State of Maharashtra	...	Respondents

Mr. Ashok Mundargi, Senior Advocate for the applicants.

Mr. S.S.Pednekar, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 2nd February, 2015.

P.C.

This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants are apprehending their arrest in Crime No.229 of 2014 registered at Akluj Police Station, Dist. Solapur for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B, 201 and 109 of the Indian Penal Code.

2. It is the case of the prosecution that on 20.11.2014, Raju Madhukar Bhosale lodged a report at the police station alleging therein that at about 7.45 p.m. on 20.11.2014, when he was passing through Vijay Chowk, he saw the present applicants, original accused No.1 Pravin Bhosale and 5 – 6 unknown persons assaulting his cousin Rahul Bhosale with sticks and other dangerous weapons. On the basis of his report, Crime No.229 was registered at Akluj Police Station. Investigation was set in motion. The applicants herein had approached

the Court of Sessions seeking pre-arrest bail.

3. The applicant has specifically contended before the Sessions Judge that the applicant No.1 was given an appointment by Dr. Khadilkar at Bombay hospital and he was to go for check-up on 20.11.2014. He had placed on record the hospital records including the letter given by Dr. M.K.Inamdar of Ashwini Hospital referring him to Dr. Khadilkar. On 20.11.2014, applicant No.1 had consulted Dr. S.V. Khadilkar, who had diagnosed some problem with his cervical spine. On 21.11.2014, he had met Dr. Khadilkar at Bombay Hospital. On 20.11.2014, the applicants had checked into New Metro Guest House at Bombay. At the time of hearing of the said pre-arrest Bail Application before the Sessions Court, the Court has observed that the case of the prosecution is that the applicants herein have conspired with the principal accused Pravin Bhosale to cause homicidal death of Rahul Bhosale.

4. The learned APP submits that the Investigating Officer has not conducted investigation as far as the presence of the applicants at Bombay, from 20.11.2014 is concerned. The learned Senior Counsel submits that he has ample evidence to show that on 21.11.2014, he had withdrawn certain amount at the ATM Centre. The learned Senior Counsel submits that he has got images in his pen drive which he would give to the Investigating Officer.

5. Perused the papers of investigation. The eye-witnesses appear to have named the present applicants as the assailants. However, as on today, it is submitted that the case against the present applicants is that of conspiracy under Section 120B of IPC and not that they are actual assailants. There are two different versions. Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is inclined to grant pre-arrest bail in favour of the present applicants.

6. It is made clear that in the eventuality that the Investigating Officer, in the course of investigation, arrives at a conclusion that the story put up by the eye-witnesses can be believed or any other incriminating material surfaces, in the course of investigation, against the applicants, the prosecution would be at liberty to file an application seeking cancellation of the relief granted in favour of the applicants by this order.

7. It is made clear that the co-accused shall not claim parity with the present applicants since the applicants are being protected only because the applicants are able to show prima facie that they were in Mumbai on the date of the incident.

8. The observations made hereinabove are prima facie in nature and the Sessions Court shall not be influenced by the above observations while deciding the application for quashing of FIR, discharge application or at the time of trial.

ORDER

(i) The application is allowed. In the event of their arrest, the applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicants shall report to the Investigating Officer and hand over the pen drive by attending on four consecutive Sundays commencing from 8.2.2015 between 10 a.m. to 12 noon.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)