

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 596 OF 2015**

Basantlal Hausala Prasad Panday and Anr. ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Munir Ahmed Kadar Chicktay for the Applicants

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

API Mr. Sachin Kothmire, from Kalwa Police Station, Thane is present

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 30TH APRIL, 2015

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P. for the State.

2. By this application, the applicants seek pre-arrest bail, in connection with C.R. No. I-278 of 2014 registered with the Kalwa Police Station for the alleged offences punishable under Sections 307, 323, 325, 452, 147, 148, 149, 504, 506 of the Indian Penal Code r/w Sections 3, 25 of the Arms Act.

3. The incident in question has taken place on 19th May, 2014. Admittedly, both the sides have received injuries in the said incident. In the present C.R, Sudama Yadav is the complainant. He has alleged that the applicants, applicant No.2's driver came to theabela and started abusing the complainant. It is alleged that the applicant No.2 pulled out a revolver and fired in his direction with the intention to kill him. He has alleged that because he ducked, the bullet missed him. According to the complaint, on raising hue and cry, the complainant's aides Lambahaddur, Hariprakash, Lalji and Omprakash came to the spot. The applicants and others are alleged to have assaulted the complainant and others with fist and kick blows. Thereafter, applicant No.2 is alleged to have fired from the revolver in the direction of Hariprasad however, the bullet is stated to have missed him. Applicant No. 2 is thereafter alleged to have assaulted Hariprasad with the butt of the revolver on his head. Thereafter, the applicant No.2 is alleged to have assaulted Lambahaddur on his face as a result of which Lambahaddur lost a tooth and thereafter, the applicants are alleged to have fled.

4. In the cross case i.e. C.R. No. 81 of 2014 lodged by the applicant No. 1, it is alleged by the applicant No.1 who is the complainant in the said CR that he learnt that Sudama Yadav had assaulted one of the aides of Sachin Mhatre i.e. applicant No.2. It is alleged that at about 11:00 a.m., when the applicants were returning home along with Raju and when they reached Sudama Yadav's tabela, Sudama Yadav and his aides, Bahaddur, Lalji, their relatives Milan Yadav, Pagla Yadav, Dipak Yadav and their friends came there. Applicant No. 2 is stated to have questioned Sudama Yadav as to why Arvind was beaten, pursuant to which, it is alleged that Sudama Yadav and his aides abused applicant No.2 and started assaulting him. It is alleged that when the applicant No. 1 went to save the applicant No. 2, Sudama Yadav and others assaulted him with wooden bamboo sticks and koyta. He has alleged that Sudama and Bahaddur assaulted him with wooden bamboos on his head, as a result of which, he fell down. Pursuant to the said assault, the applicant No. 1 was admitted to the Chatrapati Shivaji Maharaj Hospital, Kalwa and thereafter, to Jupiter Hospital, Thane and thereafter to Sion Hospital.

5. Learned Counsel for the applicants contended that the applicant No. 1 had received serious injuries as is evident from the injury certificate which is at pages 26, 28 and 29 of this application. He submitted that the injury suffered by the applicant No. 1 was fracture of the left parietal bone. He further submitted that as a result of the said injury, the applicant No. 1 was required to be admitted in the hospital for about 45 days. According to him, the complainant and others were the aggressors. He has submitted that the nature of injuries sustained by the complainant and his aides are simple in nature and not on any vital part of the body. He further submitted that the custody of the applicants is not required inasmuch as, the revolver was admittedly found on the spot where the incident took place.

6. Learned A.P.P. states that the applicant No. 2 has antecedents. Learned Counsel for the applicants states that in most of the cases, the applicant No.2 has been acquitted.

7. Be that as it may, both the parties have lodged cross cases against each other. Perused the injury certificates in both the cases i.e. C.R.

No. I-278 of 2014 and C.R. No. 81 of 2014. From the injury certificate of the complainant in the present CR, it appears that none of the injury is on the vital part. All injuries are simple, whereas, the applicant No. 1 has sustained an injury which is fracture on the left parietal bone as a result of which he was required to be admitted in hospital for 45 days. Admittedly, the revolver which was a licensed revolver, was found on the spot. As far as applicant No.1 is concerned, no specific overt act is alleged against him. It also appears that all the accused in the CR No. 281 of 2014 lodged by the applicant No.1 have been granted pre-arrest bail. Considering the aforesaid peculiar facts, the applicants are entitled to be enlarged on pre-arrest bail. As far as the antecedents are concerned, strict conditions can be imposed on applicant No. 2. Accordingly, the following order is passed :

ORDER

- (i) The applicants, in the event of arrest, be released on bail on executing PR Bond in the sum of Rs. 50,000/- each with one or two sureties in the like amount;
- (ii) The applicants shall attend the Kalwa Police Station on every Saturday between 4:00 p.m. to 5:00 p.m. till filing of the charge-sheet

and thereafter, on the first Saturday of every month between 4:00 p.m. to 5:00 p.m., till the conclusion of the trial;

(iii) The applicants shall not tamper or attempt to contact the complainant or any witness concerned with the said case;

(iv) The applicants shall co-operate with the Investigating Agency.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie* for the purpose of deciding this application.

10. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.