

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1869 OF 2015

1. Mr. Naresh Atamaram Pavanekar

2. Mr. Premnath Atamaram Pavanekar : Applicants

Vs.

State of Maharashtra : Respondent

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Mr. Kuldeep S. Patil for the applicant.

Mr. Gausar Parkar for the intervenor.

Ms. Veera Shinde, Addl. Public Prosecutor for the State.

Mr. M. R. Kekan, A.P.I. Kamothe Police Station, New Mumbai.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : December 14, 2015.

P.C. :

. This is an application for anticipatory bail filed by the aforesaid applicants apprehending their arrest in crime No. 226/2015, registered at Kamothe Police Station, Tal. Panvel, Dist. Raigad, for the offences under sections 307, 324, 323, 504 r/w. section 34 of the IPC. The aforesaid crime was registered pursuant to the FIR dated 21st November 2015 filed by Abaji Paundlik Pavanekar.

2. The case of the prosecution in brief is that, on 21st November 2015 at about 3.00 p.m., the applicants and other co-accused assaulted the complainant by means of iron rods and wooden sticks. The applicants and others are also alleged to have abused the complainant and his wife. Initially, the crime was registered under sections 324, 323, 504 read with

34 of the IPC. The applicants and other co-accused had surrendered and were released on bail. Subsequently, the wife of the injured filed an application stating that the complainant was assaulted with an intention to cause his death. Based on the said application, the offence under section 307 was added. Notice was issued to the applicants and the other co-accused for cancellation of bail. The request of the applicants to give, sufficient time to file reply to the notice was rejected and the bail was canceled mainly on the ground that subsequent to the order of grant of bail an offence under section 307 of the IPC has been added. The learned Magistrate, has held that the said offence is of serious nature and is triable exclusively by the Sessions Court and hence canceled the bail. In view of the said order, the applicants filed an application for anticipatory bail before the Sessions Court. The said application came to be dismissed by order dated 5th December 2015. The applicants have therefore preferred this application for grant of anticipatory bail.

3. Mr. Patil, the learned counsel for the applicants, has submitted that the offence under section 307 of the IPC has been added solely on the basis of the application made by the wife of the complainant. He has further submitted that the bail was canceled without giving an opportunity to the applicants to show cause as to why the bail should not be canceled. He has submitted that the nature of the injury sustained by the

complainant would not bring the offence within the purview of the section 307 of the IPC. He therefore contents that the applicants are entitled for bail.

4. The learned Addl. Public Prosecutor as well as the learned counsel for the intervenor have submitted that the applicants herein had inflicted injuries on the head of the complainant. The complainant was admitted in the hospital from 21st November 2015 till 7th December 2015. The said injuries are grievous in nature and considering the nature of the injuries, the part on which the injury was inflicted and the weapon used, the offence under section 307 is made out.

5. I have perused the record and considered the arguments advanced by the learned counsel for the applicants and the Intervenor as well as the learned Addl. Public Prosecutor for the State. The record prima facie reveals that the applicants and the complainant are neighbors. There is a water drain in front of the house of the complainant and he had covered the chamber with a plastic sheet. There was an altercation between the applicants and the complainant over the said issue which resulted in the incident of assault. The record prima facie indicates that the applicant No. 1 herein had inflicted an injury on the head of the complainant by means of an iron rod and whereas the applicant no. 2 had inflicted injuries by means of sticks on the chest and other parts of the

body.

6. The complainant was admitted in a private hospital. He was examined by the Medical Officer of M.G.M. Hospital. The Medical Officer has opined that the complainant had sustained contused lacerated wound on left parietal region. The Doctor has further stated that the X-ray/Chest CT Scan was within normal limits. The Doctor has further opined that the injuries are simple in nature and are not likely to cause death. In light of the medical opinion, in my considered view, prima facie the provisions of section 307 would not be attracted.

7. The nature of the injuries as well as the nature of the allegations levelled against the applicants would not justify custodial interrogation. The applicants are permanent residents of Village Kamothe, Tal. Panvel, Dist. Raigad, and there is no possibility of the applicants absconding and thwarting the course of justice.

8. Under this circumstances the applications are entitled for bail. Hence the application is granted on the following terms and conditions :

- (a) In the event of arrest of the applicants in Crime No. 226 of 2015 registered at Kamothe Police Station, the applicants shall be released on bail on furnishing Bail Bond of Rs. 20,000/- (Rupees Twenty Thousand only)

each with one or two sureties in the like amount to the satisfaction of Sessions Judge, Alibaug.

- (b) The applicants shall report to the Investigating Officer initially for a period of 4 days from 10.00 a.m. to 1.00 p.m. from the date of receipt of this order. Thereafter the applicants shall not visit village Kamothe for a period of one month.
- (c) The applicants shall furnish to the Investigating Officer their addresses during this period and shall furnish their temporary addresses to the Investigating Officer during the period they would leave village Kamothe.
- (d) The applicants shall not interfere with the complainant in any manner.

(ANUJA PRABHUDESSAI, J.)