

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO. 582/2015

(Kunal s/o Ajay Mahajan vs. The State of Maharashtra)

AND

CRIMINAL APPLICATION (ABA) NO. 620/2015

(Vimal Motilal Bardiya vs. The State of Maharashtra)

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

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S/Shri J.M. Gandhi/ R.M.Daga, Advocate for applicant/s
Shri P.S.Tembhre, APP for the respondent-State.

CORAM: A.B.CHAUDHARI, J.

DATED : 30th November, 2015.

Heard learned counsel for the rival parties.
Perused the First Information Report and the statements
of witnesses recorded by police during the course of
investigation.

The F.I.R. which was lodged on the same day of
the incident, shows that the applicants, namely, Kunal
Mahajan and Vimal Bardiya had played a vital role
in surrounding deceased Babbu @ Sajauddin
Islamoddin and the applicant-Kunal was armed with
an iron pipe. It is mentioned in the FIR that all these
persons were assaulting the deceased. The submission
made by the learned counsel for the applicants, that the
instant case is covered by the judgment in the case of
Suresh Pol vs. State : (2009 ALL MR (Cr) 3289 is
not acceptable, since in paragraph 3 itself it is stated

that there were no allegations against Namdeo and Purushottam, about the actual assault in the FIR, contrary to what is available in the instant case i.e. the names of Vimal and Kunal have been mentioned, having surrounded the deceased. The contention that there is no injury seen in the *post-mortem* report in tandem with the statement that the deceased was hit by an iron pipe, cannot be appreciated at this stage as the case is of unlawful assembly committing murder with the common object.

In my opinion, all these points are to be decided at the time of the trial, being matters of evidence. At any rate, there is a *prima facie* case made out against both the applicants and in a serious offence of murder by unlawful assembly, the discretion of grant of any anticipatory bail cannot be exercised in favour of the applicants. The learned counsel for the applicants cited the judgment in the case of *Abdul Hamit Ansari vs. State of Maharashtra : AIR 2000SC 3541(1)* and submitted that the applicants would surrender before the police. The said judgment is also not applicable to the facts of the present case and it is not possible to make the same arrangement. In view of the above, no case is made out for grant of anticipatory bail. Hence the order.

ORDER

Criminal Application Nos. 582/2015 and 620/2015, both are rejected.

JUDGE