

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1386 OF 2015

Sanjay Balkrishna Atigre & Ors. ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. Kedar P Lad for the Applicants.

Ms G.P Mulekar, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :12th FEBRUARY, 2016.

P. C. :

This is an application for anticipatory bail filed by the aforesaid Applicants, in apprehension of their arrest in Crime No. 126 of 2015 registered at Shahupuri Police Station, District-Kolhapur, for offences punishable under sections 326, 452 and 427 r/w. 34 of the IPC and sections 7(1) (3) of the Protection of Civil Rights Act and section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The case of the prosecution in brief is that on 3.9.2014 the Applicants alongwith the other co-accused criminally trespassed into the house of Mrs. Pournima Buchade and abused her and her family in

filthy language and also intentionally insulted them and further assaulted them by means of hockey sticks, iron rods, sticks etc. In view of the complaint filed by the complainant, the learned Magistrate had passed an order under section 156 (3) of the Criminal Procedure Code, pursuant to which aforestated crime came to be registered. In apprehension of their arrest the Applicants had filed an application for anticipatory bail before the Sessions Court, Kolhapur. Said application came to be dismissed vide order dated 18.8.2015. Hence, the present application.

3. Mr. Kedar Lad, the learned counsel for the Applicants has submitted that there is delay in lodging the complaint. The learned counsel for the Applicants has submitted that the material on record does not prima facie indicate that the Applicants were involved in committing the offences as alleged in the complaint. He has further submitted that the Applicants are therefore, entitled for bail.

4. Ms G.P. Mulekar, the learned APP for the Respondent -State has submitted that the complainant was assaulted by means of hockey sticks. Complainant had sustained grievous injuries. She has placed on record copy of medical certificate issued by the Medical Officer from D.Y. Patil Hospital and Research Institute, Kolhapur.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicants and the learned APP for the Respondent -State. At the outset it may be mentioned that the Applicants herein are alleged to have committed offence under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In the case of **Vilas Pandurang Pawar & Anr. vs State Of Maharashtra & Ors, 2012, Cri. Law Journal 4520** the Apex Court has held as under :-

“Section 18 of the SC/ ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.”

6. The records prima facie indicate that the complainant -Mrs. Pournima Buchade had lodged the complaint before the learned

Magistrate alleging that on 3.9.2014 at about 3.30 p.m. the Applicants alongwith other co-accused trespassed in her house armed with hockey sticks, iron rod, bamboo sticks, etc. and that they had abused her and her family members with reference to their caste.

7. The averments made in the complaint prima facie indicate that the said incident had occurred inside the residential house of the complainant and not in public view. Hence, prima facie bar of section 18 would not be applicable to the present case.

8. Coming to the merits of the application, the FIR prima facie indicates that the Applicants and the other co-accused had committed mischief by damaging the complainant's household articles. She has further stated that the Applicant No.1 had instigated the co-accused Sandeep to assault the complainant. When the complainant intervened and requested the assailants not to assault, the Applicant No.1 herein had instigated the co-accused Sandip and instigated him to finish her and on hearing this said Sandip inflicted blows of hockey stick on her chest. As a result thereof she became unconscious. The learned APP has placed on record the medical certificate, a perusal of which indicates that the victim was admitted in the hospital as an indoor patient from 5.9.2014. The victim was treated in the hospital

and was discharged on 16.9.2014. The Doctor has certified that the patient had suffered from pneumothorax i.e. rupture of right lung, which had resulted in leakage of air outside in pleural cavity and led to acute breathlessness. The Doctor has opined that the said condition is life threatening and the trauma injury is one of the causes of pneumothorax.

9. The averments made in the FIR vis-a-vis medical certificate prima facie shows the involvement of the Applicant No.1 and the co-accused Sandip in causing grievous injuries to the complainant. The nature of the injury as well as the gravity of the offence would not entitle the Applicant No.1 for grant of anticipatory bail.

10. The allegations against the FIR does not indicate that the Applicant Nos.2 and 3 were involved in inflicting injuries on the complainant or other family members. Considering the said fact and also considering that the Applicant Nos.2 and 3 are students of 21 years of age, the Applicant Nos. 2 and 3 are entitled for bail.

11. Hence, the following order:

(i) The application is dismissed qua the Applicant No.1.

(ii) In the event of arrest of the Applicant Nos.2 and 3 in

C.R. No. 126 of 2015 registered at Shahupuri Police Station, District-Kolhapur, the Applicant Nos.2 and 3 shall be released on bail on furnishing bail bonds of Rs.15,000/- (Rupees Fifteen Thousand only) each with one surety to the like amount.

- (iii) The Applicant Nos.2 and 3 shall report to the Investigating Officer in between 10.00 a.m. to 1.00 p.m. as and when required by the Investigating Officer for the purpose of interrogation.
- (iv) The Applicant Nos.2 and 3 shall not interfere with the complainant.
- (v) The Applicant Nos.2 and 3 shall not tamper with the evidence in any manner.

(ANUJA PRABHUDESSAI, J.)