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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 956 OF 2016

Shri Surendra Nagu Yadav	..Applicant.
Vs	
The State of Maharashtra	..Respondent.

Mr Vijay Killedar for the applicant.

Mr Rajesh Datar a/with Mr D.S.Pagare for the applicant in
APPP No. 453 of 2016.

Mr A.S. Patil APP for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 24th August, 2016

P.C.

- 1) The applicant is apprehending arrest in CR No. I-146 of 2016 dated 30/4/2016 registered with Ambarnath Police Station, District Thane under section 307, 452, 143, 147, 148, 149, 506 and 427 of the Indian Penal Code.
- 2) The first information report is lodged by Surendra Ramsabad Yadav on 30/4/2016. The first informant in his statement has stated that there was an earlier enmity between the applicant and the said informant. It is further stated that the applicant has spread rein of terror in the locality. That the applicant is also having cases pending against him. On 29/4/2016 at about 11:00 p.m. when the informant was sleeping in his house, the applicant along with other co-accused broke the door of the house of the informant and barged inside, the applicant was holding an iron pipe in his hand. After

barging inside the house of the informant, the applicant abused the informant and assaulted him with the iron pipe on his head. The other accused persons assaulted the informant with a bamboo stick. That the applicant along with other accused persons thereafter dragged the informant out of his house. The co-accused Vijay Yadav and Ajay Yadav assaulted the informant with the sharp edge weapon on his legs. The informant got unconscious. The applicant and co-accused thereafter left the scene of offence. After receipt of the information, the police admitted the informant in a hospital. In the premise the first information report is lodged.

3) Heard the learned counsel for the applicant, the learned APP for the State and the learned counsel appearing for the original complainant/ first informant and perused the entire record annexed to the present application.

4) The learned counsel for the applicant submitted that there is a long standing enmity between the applicant and the complainant. That the applicant herein has submitted a written complaint to the Commissioner of Police, Thane dated 3/2/2016 thereby expressing apprehension that the applicants may be implicated in a false case. He further submitted that the applicant is suffering from disability to the extent of 25% to his left upper limb and, therefore, the case of the complainant that the applicant assaulted him cannot be believed. He further submitted that after completion of investigation the police have filed the charge-sheet and therefore the custody of the applicant is not necessary for investigation by the police. He, therefore, prayed that the applicant may be released on pre-arrest bail.

5) Per contra, the learned APP vehemently opposed the

application and submitted that the medical record annexed to the present application does not even remotely suggest that the applicant is suffering from any disability to his right hand and that he cannot hold the weapon used in the crime i.e. the iron pipe by both his hands. The learned APP submitted that the weapon which is alleged to have been used by the applicant is yet to be recovered. That the applicant is an influential person. He further on instructions submitted that since the commission of offence the applicant is absconding. That in view of the serious allegations against the applicant, the present application may be rejected.

The learned counsel appearing for the original complainant supported the arguments of the learned APP and prayed for rejection of the present application.

6) At the out set, it is to be noted here that, it is the specific allegation of the informant that the applicant assaulted him with an iron pipe on his head. The medical certificate issued by the Medical Officer, Central Hospital, Ulhasnagar duly corroborate the said version.

7) As far as the complaint lodged by the applicant against the first informant dated 3/2/2016 (page no.51 to the present application) is concerned, it prima facie appears that the applicant herein, in a well designed manner, preplanned the present crime and after creating camouflage and/or his probable defence to be taken in a trail with mala fide intention, lodged the said complaint with the Police Commissioner, Thane.

8) As far as the plea of disability and therefore the inability to hold the weapon is concerned, that the Civil Surgeon, Civil Hospital, Thane has issued the disability certificate,

approximately to the extent of 25% because of his left upper limb meno parum. There is no other medical record available even to remotely suggest that the applicant cannot use the weapon by both his hands. The first informant has nowhere stated in his report that the applicant was holding the said iron pipe in his left hand. Even otherwise the probable defence of the applicant cannot be evaluated at the stage of grant or rejection of pre-arrest bail. There is no evidence on record to infer that, the applicant was allegedly holding the iron pipe in his left hand.

9) It is the settled position of law that at the time of grant or rejection of pre-arrest bail, the concerned court need not evaluate the probable defence of the accused which is in the form of either statements or other documents, except the defence of alibi which has its own impeachable evidential value provided it is found true in the process of investigation. In the present the first informant in his report has categorically attributed the role of assault on his head by the applicant with an iron rod. The said weapon is yet to be recovered by the investigating agency. The Investigating Officer Shri Mahesh Kale has filed a brief affidavit dated 17.6.2016, thereby placing on record the antecedents at the discredit of the applicant. Though six offences are mentioned in the paragraph no.10 of the said affidavit against the applicant, on instructions, the learned APP submitted that as of today two cases are pending for final adjudication against the applicant. It is to be noted here that when the applicant was on bail, in the earlier crimes, he has alleged to have been committed the present crime. A chart of cases, which were filed against the applicant, denotes the

propensity of the applicant towards his criminality. In addition to that, it is the specific case of the prosecution that the applicant is absconding since the day of commission of offence i.e. from 30/4/2016 and is not traceable to the investigating agency.

10) In view of the above after taking into consideration the serious allegations against the applicant, the gravity of the offence, I am of the view that, this is not a fit case to grant pre-arrest bail to the applicant.

11) The application is accordingly dismissed.

12) At this stage, the learned counsel for the applicant submitted that the applicant is granted interim relief since 8th June, 2016 and same may be extended as the applicant is intending to challenge the present order before the Apex Court.

The learned APP and the learned counsel for the original complainant vehemently opposed the said prayer. As this Court has rejected the present application on its merits, the said prayer is therefore rejected.

(A.S.GADKARI, J.)