

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1744 OF 2016

Abhyuday Narayan Mhatre	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr. Syed Asif Naqvi for the Applicant.
Ms. S. S. Kaushik, APP for the State.

CORAM : A.S. GADKARI, J.
DATE : 7th OCTOBER 2016.

P.C. :

. This is an application u/s.438 of Cr.P.C. for pre-arrest bail in C.R. No.I-93/2016 registered with Vasai Police Station, Palghar dated 11/8/2016 under sections 353, 332 of the IPC.

2. The First Information Report is lodged by Shri Ganesh Patil the Senior Clerk attached to the Encroachment Department, Vasai Virar Municipal Corporation. It is stated in the said report that the applicant has constructed approximately 900-1200 sq. ft illegal construction adjoining to his house and, therefore, with a view to serve notice upon the applicant, the complainant along with Manish Patil, Mahesh Sonawane, Deepak Rathod and Naresh Mhatre had been to the house of the applicant on 27/6/2016 between 4.30 to 5.00 p.m. That the applicants refused to accept the notice and started making allegations against the complainant, that he is a corrupt person. It is specifically and categorically mentioned in the first information report that the applicant thereafter assaulted the complainant. When the complainant tried to paste the said notice on the

front portion of the said house, the applicant forcibly restrained the complainant from doing so. The persons who were accompanying the complainant effected video shooting of the same on their mobile phones. The said fact was thereafter informed to the Assistant and Deputy Commissioner of the Municipal Corporation. After taking proper permission from the concerned Higher Authorities the present crime is registered.

3. Learned counsel for the applicant submitted that as a matter of fact it is the complainant who tried to enter into the premises under the guise of issuance of notice. It is submitted that the applicant prevented the complainant from entering into his house. He further relied on a paper cutting which is annexed to the present application, in support of his contention alleging that the complainant indulges into corrupt practice. He further submitted that the Trial Court has rejected his application only on the ground that there are antecedents at the discredit of the applicant. He also submitted that there is a delay in lodging the FIR. He submitted that the applicant will abide by the conditions and co-operate in the process of investigation and for that purpose custodial interrogation of the applicant is not necessary. He therefore prayed that the applicant may be granted pre-arrest bail.

4. The learned APP vehemently opposed the application and submitted that it is the applicant who not only objected the public servant but also assaulted him while performing lawful duty.

5. Perused the application and documents annexed to it. It is to be noted here that the complainant is a public servant and was performing his official lawful duty of issuance of said notice. It is the specific and precise case that when the complainant as a public servant was performing his lawful duty, the applicant not only obstructed him from doing his official duty but also assaulted him. It is to be noted here that now a days the instances of assault to public servants are on rise. In the FIR it is stated that after taking proper permission from the appropriate authorities the FIR is lodged and therefore according to me the delay if at all is properly explained. As far as the contention of the applicant that the complainant is indulging in corrupt practice and local newspaper has published the news about the same is concerned, it is of no avail to the applicant as there is no concrete material in the form of evidence either collected by any lawful agency or is produced before any court. Making baseless and rampant allegations against a public servant is of no use to the applicant who himself has been charged with an offence of obstruction and assault to public servant while performing lawful duties.

6. Apart from the above, the record further reveals that the applicant is accused in crime No.83/2003, Crime No.10/2010, Crime No.4/2004 and in Crime No.17/2015. The applicant while on bail in those crimes has committed the present crime which itself dis-entitles him from grant of discretionary relief of pre arrest bail.

7. In view of the facts mentioned above with the fact that the

applicant has criminal antecedents at his discredit, in my view this is not a fit case to grant pre-arrest bail to the applicant.

Application is accordingly dismissed.

(A.S. GADKARI, J.)