

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1842 OF 2016

1 Sagar Jaydev Bhojne.

2 Pravin Krishnarao Chavan. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute, advocate for Applicants.

Mr. Kalpesh Patil i/b. Mr. Pratik B. Rohade, advocate for intervenor.

Mr. Vinod Chate, APP for State.

Mr. B.M. Deshmukh, PSI , Nashik Road Police Station.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : NOVEMBER 21, 2016

P.C.:

1 Heard the learned Counsel for the applicants, the learned APP for State and learned Counsel for the intervenor. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. At the outset the learned Counsel for the applicants

submits that he would not press the application on behalf of the applicant No. 2. Hence, the application as far as applicant No. 2 is concerned, stands dismissed as withdrawn and disposed of accordingly.

4 The applicant No. 1 herein is apprehending his arrest in Crime No. 542 of 2016 registered at Nashik Road Police Station for the offence punishable under section 307, 143, 147, 148, 149 read with Section 120-B of the Indian Penal Code.

5 It is the case of the prosecution that Eknath Balu Tile lodged a report at the police station alleging therein that he was on inimical terms with Prabhakar Bhojane who happens to be the brother of applicant No. 1. It is alleged that on 27/9/2016 when the complainant was returning home and passing through the Sailani Baba Chowk, he was accosted by two persons who assaulted him with fists and kick blows. Thereafter, one Manna Gangurde assaulted him on his head with iron rod and then fled from the spot. According to

the complainant, the assailants had assaulted him at the behest of the present applicant No. 1, who happens to be the brother of Prabhakar Bhojane.

6 The learned Counsel for the applicants submits that on 25/9/2016, the present applicant No. 1 had lodged the report at the same police station alleging therein that when he was at the house of the brother, the accused i.e. present complainant Eknath Tile and his son Sachin had come to the house of his brother, raised quarrel and had abused them and thereafter had assaulted them with fists and kick blows. On the basis of his report, N.C. No. 163 of 2016 is registered at the police station. The learned Counsel for the applicant submits that in the present case, there is nothing on record to even remotely indicate that the present applicant was at the scene of offence.

7 It is further pertinent to note that Prabhakar Bhojane is not an accused in the present case. The learned Counsel further submits that

much can be said about the complainant, who was in fact on inimical terms, but has not been even suspected that the assailants were instigated by Prabhakar Bhojane.

8 As against this, the learned APP submits that there are two cases registered against the applicant No. 1 at the police station and therefore, he is not entitled to grant of pre-arrest bail.

9 The learned Counsel for the intervenor submits that the applicant had hatched conspiracy to assault the complainant. According to the Counsel for the intervenor, the N.C. was filed deliberately in preparation to commit the present offence. It is also submitted that there are CDR details to show that the present applicant was constantly in the touch of the assailants. In reply, the learned Counsel for the applicants submits that the applicant would not deny that the assailants are acquainted with him, but that by itself would not be sufficient to implicate the present applicant No. 1, in an offence under section 307 of the Indian Penal Code.

10 It is pertinent to note that the incident is dated 27/9/2016 and on 11/10/2016 the investigating officer has recorded the statement of one witness who states that in gambling club belonging to the present applicant No. 1, he had overheard the applicant No. 1 instigating the assailants. It is submitted that it is brought up witness. Be that as it may, taking into consideration the fact that the applicant was not present at the scene of offence, he deserves pre-arrest bail.

11 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of hearing application for quashing of FIR or discharge or at the time of trial. It is also made clear that none of the co-accused shall claim parity with the present applicant No. 1, as is being granted pre-arrest bail only on the ground that he was not present at the scene of

offence and he is the complainant in the N.C. which was lodged on 25/9/2016.

12 Hence following order is passed :

ORDER

- (i) The application in so far as applicant No. 1 is allowed.
- (ii) In the event of arrest in Crime No. 542/2016, the applicant No. 1 be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or more sureties in the like amount.
- (iii) The applicant No. 1 shall not reside in the jurisdiction of Nashik Road Police Station till filing of the charge-sheet.
- (iv) The applicant No. 1 shall not tamper with the evidence.
- (v) The application in so far as applicant No. 2 is concerned, the same is dismissed as withdrawn.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)