

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

ANTICIPATORY BAIL APPLICATION NO.142 OF 2017

Abhijit Prakash Dhangre

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.R.M. Thobde for the Applicant

Mr.Y.M. Nakhwa, APP, for Respondent – State

Mr.N.H. Kanade, Police Constable, Jodbhavi Peth police station,
present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 30, 2017

P.C. :

1. This application is moved by the applicant/accused for pre-arrest bail under section 438 of Criminal Procedure Code as the applicant/accused is prosecuted for the offences punishable under sections 326, 504, 506 r/w section 34 of the Indian Penal Code registered at C.R. No.439 of 2016 with Jodbhavi Peth Police Station on 3.12.2016 at the instance of one Bharti Dhangre, who is the paternal aunt of Abhijit Dhangre, the applicant/accused.

2. It is the case of the prosecution that the father of the applicant and husband of the complainant are real brothers,

however, they have dispute about the boundary and the area of their adjacent houses and they are litigating in civil Courts. On 24.11.2016, in the morning, on account of some altercation, the applicant/accused, his father Prakash and brother Vinayak assaulted Swapnil, son of the complainant with iron rod. Due to that, his little finger of right hand was fractured. When the complainant and her family members tried to intervene, they were also manhandled. The son of the complainant was admitted in hospital on 25.11.2016 and he was discharged on 27.11.2016. At that time, Swapnil, the injured, gave complaint to the police and N.C. was registered on 24.11.2016. Thereafter, on 1.12.2016, when Swapnil and his wife were at home, the applicant-accused, his father and his son arrived when Prakash assaulted Swapnil and, therefore, he again sustained injury. So, he fell down and his hand was in plaster. The applicant/accused and his brother and father threatened the complainant of her life and thereafter, she approached the police and offence was registered against the applicant/accused.

3. The learned Counsel for the applicant/accused submitted that the applicant/accused is innocent. It is due to civil dispute

between parties that the complainant has falsely implicated the applicant/accused. He submitted that though the incident has taken place on 24.11.2016, the complaint was given on 3.12.2016 i.e., 10 days after the incident. He relied on the contents of the N.C., which was recorded on 24.11.2016. He pointed out that in the N.C., there is no mention of iron rod and, therefore, at the most, it falls under section 325 of the Indian Penal Code, which is bailable and not under section 326 of the Indian Penal Code. The learned Counsel also submitted that on the same day, the applicant/accused also approached the police station and gave a complaint against Swapnil and his family members and an N.C. was registered against the injured and his family members. He further submitted that there are no criminal antecedents against the applicant and, therefore, he be granted pre-arrest bail.

4. Learned Prosecutor has opposed the application. He submitted that the incident of assault has taken place twice in respect of Swapnil. The applicant/accused, his brother, his father have entered the house of the complainant and assaulted the injured Swapnil and, therefore, the applicant/accused is not to be granted pre-arrest bail.

5. Perused the FIR, the N.C. Dated 24.11.2016, which was registered against the present applicant/accused and his relatives. Also perused the statement of Swapnil. From the entire tenor of the FIR, it is apparent that the applicant/accused, his father and brother were aggressors. In the N.C., there is no mention of use of any weapon but allegations were made that Swapnil was assaulted with fists, blows and kicks and he alongwith his family members were manhandled on 24.11.2016. The injury certificate discloses that little finger of right hand of Swapnil was fractured on 24.11.2016 due to the assault. The complaint discloses that when Swapnil was taking rest, his hand was in plaster and the applicant/accused and his relatives entered his residence on 1.12.2016 and again, assaulted Swapnil. This clearly shows that the applicant/accused and his father and brother were aggressors and have initiated the assault. However, considering the submissions of this applicant/accused, it appears that the applicant/accused and family members of the applicant/accused and family of the injured are hostile because of the land dispute and they are real brothers and the applicant/accused having criminal record.

6. In view of these facts, I allow this application with the following order:

ORDER

- a) In the event of arrest, the applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount;
- b) The applicant-accused shall cooperate with the Investigating Officer and attend the concerned police station on every Friday and Monday from 6pm to 8pm.
- c) The applicant-accused shall not tamper with the evidence or pressurise or threaten the complainant or her family members especially the nephew of the complainant;
- d) The applicant-accused shall not indulge into any verbal or physical altercations ;
- e) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

f) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

7. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)