

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1169 OF 2017
PREMA SHANVAR BAGRAD AND ORS.)...APPLICANTS
V/s.
THE STATE OF MAHARASHTRA)...RESPONDENT
WITH
CRIMINAL APPLICATION NO.686 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.1169 OF 2017

Mr.Manoj Bhatt, Advocate for the Applicant.

Mr.P.R.Yadav a/w. Priyank Dubey i/b. Radha Agarwal a/w. Ravita Kadam, Advocate for the Intervenor.

Mr.Makrand Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 4th OCTOBER 2017

P.C. :

1 Four applicants / accused who are accused in Crime No.I-103 of 2017 registered on 25th May 2017 at Police Station Wada, District Palghar, for offences punishable under Sections

307, 324, 325, 326, 352, 447, 109, 147, 148, 149 of the IPC and Section 37 of the Maharashtra Police Act, at the instance of informant Yashwant Patil, by this application under Section 438 of the Code of Criminal Procedure, are seeking pre-arrest bail.

2 Heard the learned advocate appearing for applicants / accused. He vehemently argued that the First Information Report (FIR) reflected the incident dated 18th April 2017 in respect of which separate crime is registered. By taking me to the incident dated 25th May 2017 reflected in the subject FIR, the learned advocate for applicants / accused argued that in the earlier FIR, names of applicants were not mentioned. He further argued that no specific role is ascribed to any of the applicants. Merely vague allegations are leveled against them in the FIR. The learned advocate further argued that applicant no.1 Prema Bagrao, applicant no.2 Sangita Bhoir and applicant no.3 Sudhir Patil had attended the scene of occurrence in pursuance to the letter issued by the Public Officer requiring their presence for taking up proceedings. It is further argued that there are two factions in the

village. The faction of applicants / accused had lodged complaint against a company in the village which ultimately resulted in closure of the said company. Similarly, applicant nos.2 and 3, as alleged, had helped a girl in eloping with a boy. The FIR of this incident came to be lodged. This depicts inimical relations between the prosecuting party as well as accused persons. Therefore, accused persons are falsely implicated in the crime in question. The learned advocate further argued that in all seventeen articles are recovered from co-accused. All co-accused are already released on bail. False statement was made regarding issuance of non-bailable warrant during hearing of the application before the learned Sessions Judge. With this, the learned advocate submitted that custodial interrogation of present applicants / accused is not warranted.

3 I have heard the learned APP as well as the learned advocate appearing for the First Informant. I have perused the case diary.

4 The FIR itself reflects that according to the prosecution case, land bearing Gat No.338 of Village Nare owned by First Informant Yeshwant Patil and his younger brother Anant Patil came to be encroached by several persons. The FIR contains averments that applicant no.1 Prema and applicant no.2 Sangita have also made encroachment on Gat No.338 allegedly owned by First Informant Yeshwant Patil and his brother Anant Patil. It is averred that encroachment is effected by several persons on instigation of applicant no.3 Sudhir Patil – UpSarpanch and applicant no.4 Charan Patil.

5 So far as the incident in question is concerned, according to the First Informant, on 25th May 2017, after following due process of law, it was decided to remove encroachment from the said gat number. The FIR contains averments that police aid was procured for effecting removal of encroachment. The First Informant further averred that in the afternoon of 25th May 2017, when process of removal of encroachment was going on with police aid, applicant no.3 Sudhir Patil and applicant no.4 Charan

Patil came on the spot and they instigated total 39 named persons and other 5 to 10 persons for assaulting the First Informant as well as his relatives, who were taking up the process of removal of encroachment. The First Informant averred that, therefore, persons named in the FIR, had assaulted the First Informant and his relatives by means of sticks, iron rods, axes and sickles.

6 The prosecution has invoked provisions of Sections 147 and 149 of the IPC with an allegation that in pursuance to their common object, accused persons indulged in rioting and in that process, they attempted to commit murder and caused grievous hurt to members of the prosecuting party. Once membership of unlawful assembly is established, it is not incumbent to establish whether any specific overt act has been done by any accused. Mere membership of unlawful assembly is sufficient and every member of unlawful assembly is vicariously liable for the act done by other members of the unlawful assembly while prosecuting the common object of that unlawful assembly. This position of law takes care of the argument of the learned

advocate for applicants / accused that no overt act or specific role was attributed to applicants /accused in the FIR. Perusal of statements of Ajay Patil and Nilesh Patil vis-a-vis the FIR lodged by the First Informant Yeshwant Patil demonstrates that accused persons have formed an unlawful assembly with common object and they were acting in league.

7 It is seen that in the incident in question, 6 to 7 prosecution witnesses have suffered injuries. Statement of injured Ajay Patil shows that applicant no.1 Prema and applicant no.2 Sangita were hurling abuses and then applicant no.1 Prema along with co-accused started assaulting Ajay Patil by means of wooden log. The result of this assault is reflected from the injury certificate of Ajay Patil issued by Rural hospital as well as Critical Super Specialty hospital. This witness has suffered fracture on left orbital with complete loss of vision to his eye. He has also suffered other injuries. Record of investigation contains injury certificates of other witnesses.

8 Statement of Nilesh Patil goes to show that applicant no.1 Prem and applicant no.2 Sangita along with co-accused assaulted him by means of fist and kick blows. So far as rest of applicants are concerned, statement of witnesses so also FIR shows that they had instigated other accused persons in indulging in rioting.

9 Considering the nature of offences and the fact that even witnesses are assigning specific role to present applicants / accused, custodial interrogation of present applicants / accused is warranted for effecting recovery and for eliciting further facts in order to enable the police to file charge-sheet in the matter.

10 In this view of the matter, no case for pre-arrest bail is made out. Therefore the application is rejected.

11 Request is made for extending interim relief for a period of four weeks. Considering the nature of offences alleged against applicants / accused, the request so made is rejected.

12 In view of disposal of this application, pending criminal application stands disposed of.

(A. M. BADAR, J.)