

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

ANTICIPATORY BAIL APPLICATION NO. 1227 OF 2017

1) Anand Ramesh Pagare &
2) Nilesh Jaywant Shinde .. Applicants

Vs.

The State of Maharashtra .. Respondent

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Mr.K.S. Labana, Advocate for the Applicants.
Ms.A.A. Takolkar, APP for the Respondent – State.
PSI Mangesh Anantrao Jadhav, Vithalwadi Police Station, District
- Thane, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 2, 2017.

P.C. :

This is an application for anticipatory bail. The offence is registered with Vithalwadi Police Station, District-Thane vide C.R.No. I-158 of 2017. The FIR was lodged on 25th May, 2017 for the offences punishable under Sections 147, 148, 149 and 326 of IPC and under Section 37(1) and 135 of Bombay Police Act.

2 The prosecution case is that the complainant is having a Chinese Food Shop. On 23rd May, 2017, some persons had visited the shop and they had quarreled with the complainant. On the next day i.e. 24th May, 2017, the accused came there armed with sticks, iron rod and chopper. They started quarreling and then assaulted the complainant by weapons. They also made reference to the previous days quarrel. FIR was lodged on 25th May, 2017. Statement of son of the complainant was recorded on 29th May, 2017. In the said statement, he has referred to the presence of the applicants as the assailants in the said crime which had occurred on 24th May, 2017. The co-accused was arrested. He has also implicated the applicants as the persons who were involved in the crime.

3 Learned counsel for the applicants submits that the statements of the complainant does not make any references to the presence of the applicants. The statement of son of the applicant was recorded on 29th May, 2017 and his version is afterthought. He further submitted that taking statement of the complainant's son as it is, no role of assault is attributed to applicant no.2.

4 Learned APP submits that investigation is in progress and the complicity of the applicants is revealed during the investigation. Their custodial interrogation is necessary. Applicant no.1 was armed with chopper and he is attributed the overt-act of assaulting the complainant. It is, therefore, submitted that the application may be rejected.

5 I have perused the FIR and the papers of investigation. Although, the statement of the complainant's son is recorded belatedly, he has named the applicants in the incident of assault. However, no role of assault is attributed to applicant no.2. As far as applicant no.1 is concerned, it is alleged that he has used chopper in assaulting the complainant. From the FIR, it is apparent that the incident dated 24th May, 2017 had occurred on account of previous day's quarrel. However, considering the overt-act attributed to applicant no.2, relief under Section 438 can be granted to him. As far as applicant no.1 is concerned, he has played a role of assaulting the complainant by chopper and, therefore, no relief can be granted to him.

6 Hence, I pass the following order:

:: ORDER ::

- (i) In the event of arrest of applicant no.2 (Nilesh Jaywant Shinde) in connection with C.R.No. I-158 of 2017, registered with Vithalwadi Police Station, District-Thane, he may be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount;
- (ii) Applicant no.2 is directed to report Vithalwadi Police Station, District - Thane, once in a week on Saturday between 11:00 a.m. to 1:00 p.m., till filling of the charge-sheet;
- (iii) The application of applicant no.1 is rejected.
- (iv) Anticipatory Bail Application is disposed of on the above terms.

(PRAKASH D. NAIK, J.)