

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1942 OF 2017

Kalpesh Jagannath Patil ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Santosh Bhamre with Vadakkemadom Lakshmanan
Subramanian Rajam (V Slakshmanan), Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 9th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.I-169 of 2017 for offences punishable under Sections 341, 324, 326, 323, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code registered with Wada Police Station, District Palghar on the basis of report lodged by Dhiraj Bhagwan Bhoir while taking treatment at the Rural Hospital, by this application, is seeking pre-arrest bail.

2 Heard the learned Advocate appearing for the applicant. He argued that the co-accused had been granted anticipatory bail by the Sessions Court. It is further argued that according to the prosecution case, accused persons came and

stopped the car of the complainant by two vehicles. There cannot be meeting of mind in order to form common object for commission of the crime in question. There was no meeting of mind and as such, the applicant cannot be made vicariously liable in the incident in question. The role attributed to the present applicant, who is student is assault by means of fist and kick blows. The applicant is student and he has to attend the examination. Nothing is to be recovered from him and, therefore, the custodial interrogation of the present applicant is not warranted.

According to the prosecution case, accused persons have formed an unlawful assembly with common object and committed crime. The common object is entertained in the human mind. It is merely a mental attitude and as such, no direct or tangible evidence can be had for establishing common object. Common object is gathered from the acts which persons commits and result therefrom. Common object can reasonably be collected from the nature of assembly, behaviour of member of such assembly at, before and after the incident. Once the membership of a unlawful assembly is established, it is not incumbent to establish whether any specific overt act has been done by any accused. Mere membership of the unlawful assembly is sufficient to impose vicarious liability on every member of this assembly.

3 In the case in hand, injured Dhiraj in his FIR has alleged that when he and his friend Minesh were going by four wheeler vehicle for having dinner at a place known as '*kelicha pada*', in front of Punjabi Dhaba, their car came to be intercepted by vehicle of Creta make. Accused Kaustubh Adhikari alighted from that vehicle and asked the First Informant to open the door of his car. At that time, another vehicle came from behind. Other accused persons alighted from that vehicle. The First Informant averred that all accused persons assaulted him as well as his friend Minesh. Weapons attributed to the co-accused are wooden and iron rods. So far as the present applicant is concerned, it is averred that he has assaulted First Informant Dhiraj and his friend Minesh by means of fists and kick blows. The FIR as such, reflects common object of accused persons, who are categorically named in the FIR. The incident in question took place after chasing the car of the victim, by making him to alight from the car and then assaulted him by group of accused persons. The result of the assault is seen from the injury certificate which shows multiple injuries on the victim. It is seen that the victim suffers fracture injuries.

4 The applicant is seeking pre-arrest bail. The FIR reflects over act committed by him with the co-accused. Hence, *prima facie*, it cannot be said that he was not the member of the unlawful assembly. Nature and seriousness of offence is a relevant

consideration while considering the application for anticipatory bail. Considering the nature of offence allegedly committed by the accused, no case for bail is made out.

5 The application is, therefore, rejected.

(A.M.BADAR J.)