

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2052 OF 2017

Gajanan Khandu Awale ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Vijendra Kumar Rai for the applicant.
Ms. Anamika Malhotra, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 22nd NOVEMBER, 2017

PC:-

1. The applicant, who is accused in Crime No.159 of 2016 registered with Police Station Tilak Nagar, Mumbai for the offences punishable under Sections 307, 324, 504, 506(2), 427, 141, 143, 147, 148 and 149 of the Indian Penal Code, by this application is seeking his pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. He argued that all co-accused in this crime are already released on bail. According to the learned advocate for the applicant, FIR lodged by Tushar Kharpe shows that the applicant had assaulted Rohit Kamble by

means of a sword but statement of Rohit Kamble shows that he was assaulted by Rohit Jadhav by means of a Bamboo. The learned advocate further argued that statement of Ranjana, who is mother of the first informant shows that the present applicant was holding a Bamboo. The applicant is falsely implicated in the crime in question and therefore, he is entitled to the relief claimed.

3. The learned APP opposed the application by contending that complicity of the present applicant in the crime in question is reflected from the papers of the investigation. The learned APP further argued that the applicant is having criminal antecedents and he is involved in the offence punishable under Section 307 of the Indian Penal Code.

4. Nature of the crime and circumstances in which it is committed, degree of criminality shown while commission of the crime are important factors governing the liberty of the persons accused of an offence. In the case in hand, according

to the prosecution, accused persons had formed an unlawful assembly with common object and they indulged in commission of alleged crime in prosecution of their common object. An object is entertained in a human mind and it being merely a mental state, no direct evidence can be available for establishing the common object. Such common object can be gathered from the acts, which a person commits and the result there for. It is also gathered from the nature of arms which carries behaviour of members of such assembly prior to at the time of commission of offence and subsequent thereto. Once, membership of an unlawful assembly is established, then it is not incumbent to establish whether any specific overt act has been done by any accused. Mere membership of an unlawful assembly is sufficient and every member of such unlawful assembly is vicariously liable for the acts done by other members either in prosecution of the common object or as such, which the member of unlawful assembly knew were likely to be committed. With this, let us see what is the

recitals in the FIR as well as statement of several witnesses recorded by the prosecution.

5. The incident in question took place in the residential locality near P.L Lokhande Marg, Chembur. Statement of witnesses shows that the present applicant as well as co-accused Kuldip Ghodke @ Gandya, Rupesh Ubale, Nilesh Waghmare @ Waghya, Shekhar Londhe and their associates are known goons in the locality and their mere presence in the locality disturbs the public order. The witnesses further averred that the present applicant alongwith other accused persons went on demolition spree in the locality in the night hours of 19.5.2016. They all were armed with swords and bamboo sticks and stones. They all were giving abuses and indiscriminately damaging vehicles in the locality. Statement of the first informant as well as the witnesses recorded by the prosecution shows that the present applicant alongwith his associates damaged several vehicles parked outside the houses and ransacked several offices and houses. The first informant

recorded that his motor cycle was also damaged by the members of the unlawful assembly and he was pushed inside his house and assaulted by them. The first informant have reported that members of that unlawful assembly did not spare even his two and half years old female child named Krushali. She was thrown to the ground by members of the unlawful assembly, of which the present applicant was one of the member. Then there was assault of a person named Rohit. The first informant averred that it was the present applicant, who assaulted him by means of sword.

6. Situation prevailing on the scene of occurrence can be gathered from the spot panchnama report soon after the incident. Perusal of the spot panchnama shows that out doors of several houses were having signs of blows of swords. Several houses and offices were seen to be ransacked with damage to the property in the houses and offices. Several motor cycles, handcarts as well as cars and auto rickshaws were found to be damaged by members of unlawful assembly

of which as per statement of witnesses the present applicant was one of the member.

7. In the wake of this evidence against the present applicant the question whether Rohit was assaulted by him or his associate pales into insignificance. The public order was disturbed because of act of accused persons including the present applicant as seen from the record of investigation. The charge-sheet filed against the other accused persons reflects that the present applicant was not available for arrest right from the year 2016.

8. Considering the degree of criminality shown by the unlawful assembly of which the present applicant was one of the member, no case for pre-arrest bail is made out. Therefore, the application is rejected.

(A.M. BADAR, J)