

Sarnobat

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

ANTICIPATORY BAIL APPLICATION NO. 157 OF 2018

Nilesh Chandrasen Bajgude.	.. Applicant.
Vs.	
The State of Maharashtra.	.. Respondent.

ANTICIPATORY BAIL APPLICATION NO.215 OF 2018

Kalpesh Shashikant Bhagat.	.. Applicant.
Vs.	
The State of Maharashtra.	.. Respondent.

Mr. Shyamrishi Pathak, for the Applicant in ABA No. 157/2018.
Mr. Tapan Thatte, for Applicant in ABA No. 215/2018.
Mr. Y. M. Nakhwa, APP in ABA No. 157/2018.
Mr. S. H. yadav, APP in ABA No. 215/2018.
Mr. D. S. Gaikwad, PC , Vadgaon Maval Police Station, Pune (Gramin).

CORAM : P. N. DESHMUKH, J.

DATE : 15TH MARCH, 2018.

P. C. :

1. As both these applications are arising out of same Crime, are decided by this common order. Applicant Nilesh Bajgude and applicant Kalpesh Bhagat by these applications had sought anticipatory bail in Crime No. 160/2017 registered with Vadgaon Maval Police Station for the offences punishable under Section 307, 325, 143, 147, 148, 149, 506 of Indian Penal Code. By interim orders dated 24th

January, 2018 and 6th February, 2018 respectively, both the applicants are protected from arrest by imposing conditions to mark their presence with Investigating Officer and to co-operate for investigation. It is no case of prosecution that either of the applicants had misused the liberty granted or had not attended the I.O. Admittedly, charge-sheet in the present Crime is filed.

2. According to learned counsel for the applicant in ABA No. 157/2018, there is no involvement of applicant that can be established from the report as well as from the additional statement of injured Sudhir Pardeshi and had contended that the only involvement of said applicant from the documents is that, he is seen present on the scene of offence and nothing more.

3. Learned counsel appearing for the applicant in ABA No.215/2018 by referring to report, additional statement of injured and his further statement recorded after having been confronted with CCTV footage had submitted that, applicant is not seen in the same contents and that in fact on this ground this court had granted interim relief to applicant. Another ground canvassed for the applicant of possibility of his falsely implication, it is submitted that, at the time of incident relations between applicant and injured Sudhir Pardeshi were strained as both belong to two different groups. To substantiate said case, learned counsel has referred to contents of statement of injured and

has therefore, submitted that as the investigation is complete and since applicant had attended the I.O. while on bail, application be allowed.

4. Learned Additional Public Prosecutor has opposed the applications and had contended that there is ample evidence which established involvement of both the applicants and has further contended that apart from the CCTV footage, by which injured is confronted, there is no other CCTV footage. The submissions advanced as aforesaid, in fact supports the case of applicants which submissions are duly considered by this Court while granting interim bail to the applicants as according to the statement of injured when he was confronted with CCTV footage, he has in clear term stated that applicant Kalpesh Bhagat is not seen in the CCTV footage.

5. In the background of submissions advanced as aforesaid, on perusal of report lodged by Raju Ram, cousin of injured reveals that on 23rd September, 2017 in the evening he visited the spot situated near hotel Sheetal and noticed 10-15 boys having armed with wooden logs assaulted Sudhir Pardeshi who is lying injured. As per his statement along with him, Hitesh Pardeshi, Vishal Pradeshi were also at the spot who interfered the attack, when they were also abused by the assailants and were threatened not to shout and as such they restrained from interfering in the assault. Complainant further states that after the assailants ran away from the spot, they went near the

injured and found him to have sustained serious injury on his head, face and has lost his tooth. Injured was referred for medical treatment.

6. Perusal of report as such reveals that there is no name of applicant Nilesh Bajgude mentioned and though name of applicant Kalpesh Bhagat is stated at Sr. No. 3, no overt act is attributed to him. The statements in the report are general and too vague to connect applicants as an author of any of the injuries sustained by Sudhir Pardeshi either on his head or face.

7. Statements of injured Sudhir Pardeshi reveals that on 23rd September, 2017 at 6.00 am. while he was sitting at one of his relatives house, boys belonging to Veer Chakra group by jumping from the iron gate entered his premises. In the initial part of his statement injured had stated that relations between his group and boys belonging Veer Chakra group, were strained and has also report to some incident dated 22nd September, 2017 with reference to assault on one Swapnil Dhore, one of the members belonging to the injured's group for which offence was registered with Talegaon Police Station. It also reveals that prior to this incident, there was assault by the boys belonging to Veer Chakra group during Dahi Handi festival and on Abhijit Chikhale belonging to Sudhir Pardeshi's group. Considering the contents of statement as such, it is prima facie established that relations between injured and that of the applicant were strained much prior to the

incident and out of such relations there were frequent quarrels and assault between the boys belonging to the group of injured at the hands of members from the group of Veer Chakra Mandal.

8. In the background of above circumstances, when the statement of Sudhir Pardeshi is further considered, it reveals that after seeing the assailants armed with iron rods, sticks in their hands, he apprehended assault on him and started running from the house of his relative Hitesh Paswan. However, fell down and was assaulted by applicant Kalpesh Bhagat, to whom co-accused Sudhri Dhore, Swapnil Dhore, Karan Karke, Akshay Lonari, Nagesh Shetaye joined and open attack simultaneously on his head, face while co-accused Nitin, Pradip More assaulted by stone and co-accused Manav Mhalaskar and 3 to 4 other boys had assaulted by kick blows and fist blows and ran away from the spot. In the background of injured's statement as aforesaid, he sustained assault upon him by such number of persons as aforesaid repeatedly and at the same time thus, injured is expected to sustain number of injuries on his person. However, on perusal of his injury report, he is certified to have sustained five grievous injuries. Injuries sustained since are grievous, certainly cannot be neglected. However, as involvement of applicants is with number of other co-accused as aforesaid, also are stated to have committed assault on head and face of injured, it cannot be said that injury No. 1 over scalp or injuries at Sr.

No. 2 and 3 on the face are caused by applicant Kalpesh Bhagat only. More particularly when, in all 23 accused are involved in this Crime out of those 11 are released on bail by Trial Court.

9. In the background of above facts of case as well as observation, perusal of additional statement of Sudhir Pardeshi reveals that, he was confronted with the CCTV footage and on watching the same though, he has named applicant Nilesh Bajgude as already stated earlier, no role is attributed to Nilesh Bajgude in the assault. Even in the additional statement of Sudhir Pardeshi, except for naming him as one of the co-accused, nothing is stated while applicant Kalpesh Bhagat is stated to be not seen in the CCTV. This Court while protecting applicant Kalpesh Bhagat by interim order dated 6th February, 2018 had in clear term observed that, there was CCTV camera in front of spot of incident and though, according to the injured applicant was one amongst the assailants who have committed assault by wooden logs, he was not seen in the CCTV footage and further observed that investigation is complete and charge-sheet is filed, had protected applicant Kalpesh Bhagat.

10. In view of the nature of evidence available against the applicants as aforesaid and for the reasons mentioned above, both the applications are liable to be allowed, interim orders passed in favour of these applicants by this court dated 24th January, 2018 and 6th

February, 2018 stand confirmed.

11. Applicant shall mark his presence with Police Station Vadgaon Maval on the 1st day of each month initially for period of six months and thereafter quarterly on the 1st day of each such month.

12. Applications are disposed of as allowed.

13. Learned Court shall not get influenced with the observations made herein above and shall independently evaluate the evidence at the time of trial.

[P. N. DESHMUKH , J.]