

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

ANTI.BAIL APPLICATION NO.321 OF 2018

Vijay Vithal Dalvi	... Applicant
Vs.	
State of Maharashtra	... Respondent

Mr.Vikas Shivarkar for Applicant
Mr.S.H.Yadav Addl.Public Prosecutor for State
Mr.Nandkumar J.Ghag PSI Chandan Nagar
Police Station, Pune present

**CORAM : P.N.DESHMUKH, J.
DATE : 2ND APRIL, 2018.**

P.C.:

Heard learned counsel for the applicant and the learned Additional Public Prosecutor.

2. By an order dated 5.3.2018 applicant was protected by interim order, however, since his physical condition was not good as he was unable to walk, the matter was posted for further consideration by protecting applicant from arrest, by way of interim relief and no directions were given to the applicant to attend the Investigating Officer as applicant was unable to walk and thus to attend the Investigating Officer and as such was

ineffective to co-operate the investigation thus he was directed to attend the Investigating Officer from 21.3.2018 to 24.3.2018.

3. The learned Additional Public Prosecutor on instructions, submitted that the applicant had accordingly attended the Investigating Officer and one sickle came to be seized as produced by him. No case diary is produced since not made available to the learned Additional Public Prosecutor.

4. It is noted that while granting interim protection to the applicant, case diary was perused and on noting that the incident of assault on the complainant took place on 3.1.2018 at 7.15 p.m. near Hotel Green Hing, Wadgaon Sheri, Road, Pune Allegation against the applicant was of his assaulting with the co-accused on the complainant by a sickle which assault was witnessed by witness Sonu @ Pankaj.

5. Learned counsel for the applicant by referring to the report submitted that the role attributed to the co-accused is grave than that of the applicant and had even doubted the presence of the alleged eye-witness at the spot contending that as per the contents of report after the assault, the assailants had ran away.

6. In the light of the submissions advanced as aforesaid

on perusal of the report, it is revealed that presence of the applicant as one of the assailant is established as according to its contents, the applicant has assaulted complainant on his hands, back and thigh by a sickle which assault was intervened by complainant's friend Sonu. It is further stated that persons who were present on the road had ran way from the spot and even according to case of applicant, eye witness ran away form the spot after the assailants has ran away. In that view of the matter, it cannot be said that presence of Sonu @ Pankaj on the spot at the time of the incident is doubtful. In fact, according to the complainant, the said eye-witness has intervened in the assault.

7. Though according to the report, apart from the applicant, there are other co-accused who are stated to have committed the assault on the complainant, specific act is attributed to the applicant about his assaulting on the complainant as aforesaid, which is further found corroborated to the injury report of the complainant.

8. Moreover, learned Additional Public Prosecutor has tendered on record police report according to which, applicant is found to have criminal record having as many as five crimes

registered against him, apart from initiating chapter proceedings against him under the provisions of the Criminal Procedure Code, 1973.

9. Learned counsel for the applicant though contended that the applicant is acquitted in first four crimes mentioned in the report, that by itself is not sufficient to consider the ground in favour of the applicant as from the police report, it is *prima facie* established that apart from the applicant's involvement in the present crime, he is a habitual criminal.

10. In view of the above facts as there is *prima facie* involvement of the applicant in this crime, application is liable to be rejected. Hence, I pass the following order :

O R D E R

Application is dismissed.

(P.N.DESHMUKH, J.)

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