

rpa

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

BAIL APPLICATION NO.1111 OF 2018

Ajay Dyaneshwar Bhoir

.. Applicant

Vs.

State of Maharashtra & Anr.

.. Respondents

.....

Sabre Alam i/b. Umar Kazi, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent – State.

Mr.Sachin B. Thorat, Advocate for Respondent No.2.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 4, 2018.

P.C. :

The applicant is seeking bail in connection with CR No.I-240 of 2017, registered with Vishnu Nagar Police Station, Dombivli, District-Thane, for the offences punishable under Sections 307, 326, 452, 323, 143, 144, 145, 149, 504 read with 34 of Indian Penal Code (“IPC”, for short). Applicant was arrested on 18th December, 2017. The investigation is completed and the charge-sheet has been filed.

2 First Information Report was lodged on 7th December, 2017, by Nana Gangaram Patil. It is alleged that the accused were enimical with the complainant and his family members on account of a property dispute. On 7th December, 2017, the complainant

noticed that while he was returning home, accused Dyaneshwar Bhoir, his sons and others were standing in front of the building. They abused the complainant. After reaching home, the complainant informed about the same to his wife by entering into the house by rear door. Complainant's wife tried to close down the front door of the house. At that time, the accused, namely, Dyaneshwar Bhoir, Vijay Bhoir, Ajay Bhoir, Vaibhav Bhoir, Rama Bhoir, Sadashiv Bhoir, Kiran Bhoir, Sanjay Bhoir, Subhash Bhoir and Raju Parshuram Bhoir, along with two others forcibly entered into the house of the complainant. Accused no.1 assaulted the complainant by giving blow of chopper on the head of the complainant. Accused no.2 assaulted by iron rod on his neck and accused no.4 assaulted him by cricket stumps by giving blows on his hands. On hearing hue and cry, the nephew of the complainant, namely, Kalpesh Mohan Patil came to the spot and intervened to save the complainant from the assault. Accused nos.1 to 10 were armed with wooden logs, sticks and iron rods and assaulted Kalpesh Patil on his head, face, shoulder and chest. Kalpesh sustained serious injuries and he fell on the spot. He was unconscious. Accused nos.1 and 2 were instigating others that the complainant and his nephew should be killed and they assaulted them. Thereafter, the assailants left the place of incident. The injured persons were taken to the hospital. Complainant and his nephew had sustained several injuries. FIR was registered as

stated above on 7th December, 2017. During the course of investigation, statement of complainant's daughter was recorded on 10th December, 2017, which was followed by the statement of the wife of the complainant. The said witnesses have also attributed the overtact to the accused having assaulted the injured persons. On completing investigation, charge - sheet was filed.

3 Applicant preferred an application for bail before the Sessions Court which was rejected on 6th April, 2018.

4 Learned advocate for the Applicant submitted that the Applicant is impleaded on account of enmity. There is a property dispute between the complainant and the family of the Applicant. The entire family is being implicated in the said crime. It is submitted that no specific overtact has been attributed to the applicant in the first information report and the statements of other witnesses. Applicant is in custody from the date of arrest and charge-sheet has been filed against the accused. No purpose will be served by keeping the Applicant in custody. It is further submitted that some of the co-accused are being granted anticipatory bail or regular bail by this Court as well as by the Sessions Court. Learned counsel for the Applicant relied upon the order granting anticipatory bail passed by this Court in favour of accused Kiran Bhoir, Subhash Bhoir, Sanjay Bhoir and the order

granting regular bail passed by the Sessions Court in respect to accused Raju Bhoir and Rameshwar Sadashiv Bhoir. It is submitted that the applicant is also entitled for bail on the ground of parity.

5 Learned APP submitted that there is sufficient evidence against the Applicant-accused to show his involvement in the crime. Complainant and the other witnesses has specifically mentioned Applicant as one of the person who had assaulted the injured Kalpesh Patil, who had sustained serious injuries. It is submitted that the version of the complainant is also supported by the statements of his wife and daughter. It is further submitted that the co-accused were granted either anticipatory bail or regular bail on the basis of the circumstances which are reflected in the said orders, and, therefore, the Applicant is not entitled for parity. It is submitted that the anticipatory bail was granted to the co-accused on the ground that they were not present at the scene of offence. It is submitted that the other accused was granted regular bail because he was handicapped and the fourth accused was granted bail considering the fact that there was no evidence to show that he has actually participated in the crime. Learned APP also submitted that the injured Kalpesh Patil has sustained severe injuries and he is still undergoing treatment. He relied upon the certificate issued by Rubi Hospital Clinic, which indicate that Kalpesh Patil has suffered injuries to his head, which has resulted

in loss of vision and various other ailments. It is further submitted that the statement of Kalpesh Patil was recorded on 22nd June, 2018, after the co-accused were granted bail by the regular court and anticipatory bail by this Court. Kalpesh Patil has attributed role to the accused including the Applicant in commission of the alleged crime. It is, therefore, submitted that the application for bail may not be granted. Learned counsel for the intervener/original complainant also opposed the grant of bail. He has supported the submissions advanced by the learned APP. It is submitted by him that ground of parity is not applicable to Applicant, as the co-accused were granted bail or anticipatory bail on the basis of the factual aspects, which are reflected in the said orders. It is submitted that as a result of the assault on the injured Kalpesh Patil, he has sustained serious injuries, which are reflected in the Medical Certificate issued by Rubi Hospital/Hall Clinic. He has suffered blindness in his eyes. It is further submitted that the application for bail be rejected.

6 Having heard both the sides. I have also gone through the charge-sheet, which is part of this application as well as the Medical Certificate/s tendered by learned APP and the advocate for intervener and the statement of Kalpesh Patil, which is produced by the learned APP. The said statement was recorded on 22nd June, 2018. On perusal of the first information report, it can

be seen that there is a dispute between both the parties on account of the property. On the date of the incident allegedly the accused had entered into the house of the complainant and he was assaulted. The other injured person who tried to intervene, was also assaulted. In the First information report it is alleged that the complainant was assaulted accused nos.1, 2 and 4, by using chopper, iron rod and cricket stumps. The nephew of the complainant was assaulted by accused nos.1 to 10. It is alleged that all of them had used wooden logs, wooden sticks and iron rods while assaulting Kalpesh Patil. There is no specific overt-act attributed to any accused *qua* assault on Kalpesh Patil. There is apparently no recovery of any weapon from the Applicant-accused. The statements of wife and daughter of the complainant reiterates the version of the complainant. It is pertinent to note that the co-accused (Kiran Bhoir) had preferred application for anticipatory bail before this Court, which was numbered as ABA No.261 of 2018. The said applicant-accused had contended that he was not present at the scene of offence at the time of alleged incident, and, at the relevant time he was present at his native place at Netivli. Learned APP after perusing the record of investigation fairly pointed out the fact that during the course of investigation, it was revealed that the said accused was not present at the scene of offence and was at Netivli, on the day and time of the incident. On the basis of the circumstances, the said accused was granted

anticipatory bail. I have perused the order granting anticipatory bail to Subhash Shriram Bhoir, Sanjay Shriram Bhoir, vide order dated 21st March, 2018, passed by this Court in ABA No.10 of 2018. It was contended that applicant no.2 was not at the scene of the offence and he has been falsely implicated in this case. Learned APP pointed out that, the Court while passing the said order has observed that CCTV footage of the accused Sanjay Shriram Bhoir was verified and it was found that he was in a shop at 3:00 p.m. in the market. It was also contended by accused Subhash Bhoir that even he was not present at the time of incident and he was watching cricket match. However, as far as the said accused is concerned, it was submitted by the prosecution that the accused had relied upon statement of the relatives of the said applicant. The accused were granted anticipatory bail by this Court. I have also perused the order dated 5th January, 2018, passed by the Sessions Court granting bail to accused Raju Bhoir. While granting bail, the Sessions Court had observed that he was a handicapped person, and, considering the said fact the bail was granted to him. The other accused Rameshwar Bhoir was also granted regular bail by Sessions Court considering the nature of material evidence available against him. It is apparent that the Kiran Bhoir has been granted anticipatory bail considering the fact that he was not available at the scene of the offence, which fact was verified by the investigating machinery. However, the said fact

also indicate that the said applicant was purportedly falsely named in F.I.R. which indicates that he was allegedly implicated in the said crime as assailant. On perusal of the order dated 21st March, 2018, granting anticipatory bail to Subhash Bhoir and Sanjay Bhoir, it is apparent that the police had verified and affirmed from the CCTV Footage, that Sanjay Bhoir was not present at the scene of the offence. While passing the said order, this Court has also observed that it is also pertinent to note that even if the prosecution case is taken as it is, no specific role has been assigned to the said applicant viz. Subhash Bhoir and Sanjay Bhoir. Whether or not the Applicants were present at the spot that is plea of alibi, will be considered at the time of trial. Thus, it is apparent that while granting anticipatory bail to the said accused, the factum of the role, the nature of allegations made against them were considered by this Court. The Applicant is attributed similar role. It is significant to note that the plea of alibi of the some of the accused stated above was verified by the prosecution. The fact remains that identical role was attributed to the Applicant being one of the assailants assaulting Kalpesh Patil in the first information report. It is also pertinent to note that the statements of wife and daughter of the complainant also attributes the aforesaid role to accused. Prosecution has relied upon statement of Kalpesh Patil, which was recorded on 22nd June, 2018. In the said statement he has attributed the overt-act of assaulting him and

complainant to accused. He stated that several accused had assaulted his uncle Nana PatilApplicant which is contrary to the version of his uncle / complainant, as reflected in the first information report. The said witness has alleged that the accused had assaulted him and specific overt-act has been attributed to the accused including the applicant. It is submitted that the applicant had assaulted the said witness by giving a blow of cricket stump on his neck. However, it is submitted by the counsel for the applicant that from the Medical Certificate, which is at Page-117 of the compilation, it is not seen that there is any injury on the neck of the said injured person. It would be pertinent to note that all the other witnesses had not attributed of specific overt-act to accused assaulting Kaplesh Patil and bail was granted to some of the accused considering the absence of specific overt-act to them. This statement recorded on 22/6/2018 improvised the prosecution case. Be that as it may be, considering the role attributed to the applicant in the FIR and the statements of witnesses and also in the light of the observations made hereinabove, there is no impediment in granting bail to the Applicant - accused. Hence, this application can be allowed.

7

Hence, I pass the following order:

This operative part of the order is already uploaded on the net 5th September, 2018.

:: ORDER ::

- (i) Bail Application No.1111 of 2018, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with CR No.I-240 of 2017, registered with Vishnu Nagar Police Station, Dombivli, District-Thane, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (ii) Applicant shall report Vishnu Nagar Police Station, Dombivli, District-Thane, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till filing of the charge – sheet;
- (ii) Applicant shall not tamper with the evidence;
- (iii) Bail Application No.1111 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)

Rajeshri
Prakash
Aher

Digitally signed
by Rajeshri
Prakash Aher
Date:
2018.09.11
14:37:10 +0530