

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

CRIMINAL BAIL APPLICATION NO. 2305 OF 2018

Vaibhav Sadashiv Bhoir	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO. 1309 OF 2018
IN
CRIMINAL BAIL APPLICATION NO. 2305 OF 2018**

Nana Gangaram Patil	... Intervenor
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In the matter between

Vaibhav Sadashiv Bhoir	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Pravin B. Gole a/w Mr. Revati Tatkare for the applicant.
Mr. A.R. Kapadnis, APP for the Respondent-State.
M. Uday Warunjikar for the intervenor.
Mr. A.M. Tadani, API, Vishnu Nagar Police Station is present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th DECEMBER, 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 the front door of the house. At that time, the accused, Dyaneshwar Bhoir, Vijay Bhoir, Ajay Bhoir, Vaibhav Bhoir (applicant), 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 (applicant) assaulted him by cricket stump by giving blows on his fingers. On hearing hue and cry, the nephew of the complainant,

Kalpesh Mohan Patil came to the spot and intervened to save the complainant from the assault. Accused nos.1 to 10 assaulted Kalpesh Patil on his head, face, shoulder and chest by wooden log, sticks and iron rod. Kalpesh sustained serious head 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 injuries. They were taken to hospital for treatment. 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 11th June, 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. 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 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 Ajay Bhoir has been granted bail by this Court. 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 complainant and 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 role attributed to them, 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 serious 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. For a long time he was under coma. 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, has stained serious injuries. He has suffered blindness. The statement of Kalpesh Patil attributes specific role of assaulting him by the applicant. The complainant has received threat from accused and in that regard complaint has been lodged on 29th October, 2018.

6. Having heard both the sides. I have also gone through the charge-sheet. The said statement of Kalpesh Patil 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 by accused nos.1, 2 and 4 (applicant), by using chopper, iron rod and cricket stump. 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 rod

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. The complainant has alleged that the applicant had assaulted him by giving blow by cricket stamp on his fingers. 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 therein 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 shows 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. 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 similar role was attributed to the Applicant being one of the assailants assaulting Kalpesh Patil in the first information report. It was alleged that accused Nos. 1 to 10 assaulted Kalpesh Patil. 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 Patil 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. The applicant had assaulted the said witness by giving a blow of cricket stump on his shoulder. The accused Ajoy Bhoir had allegedly assaulted by cricket stump on his neck, however, from the Medical Certificate 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 22th June, 2018 improvised version.

7. Apart from what is stated in the above, it is pertinent to note that in the First Information Report the applicant had assaulted by cricket stamp to the complainant on his finger and all accused had jointly assaulted Kalpesh Patil. This Court has granted bail to Ajay

Bhoir vide order dated 4th September, 2018. It is noted that the applicant is in custody from 8th December, 2017. The threats were purportedly received as pointed out by the learned counsel for the intervenor from the person who were granted bail and that co-accused also issued alleged threat when he was brought to the Court and in that regard, the complaint has been lodged by the informant. 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, bail can be granted to the applicant.

ORDER

- (i) Bail Application No. 2305 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, twice in a month on second and fourth Saturday of the month between 10:00 a.m. to 12:00 noon, till

filing of the charge - sheet;

(iii) Applicant shall not tamper with the evidence;

(iv) Bail Application No.2305 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)