

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

ANTICIPATORY BAIL APPLICATION NO.2528 OF 2018

Santosh Sitaram Gaikwad

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Kanishk Jayant, Advocate for the Applicant.
Mr.R. M. Pethe, APP for the Respondent – State.
Mr.A.S. Sawant, PI Parksite Police Station, Vikhroli, Mumbai,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 10, 2018.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.9 of 2018, registered with Parksite Police Station, Vikhroli, Mumbai, for the offences punishable under Sections 307, 143, 144, 147, 148, 149, 452, 504, 427 and 336 of Indian Penal Code (“IPC”, for short) and under Section 3 of Prevention of Damage to Public Property Act, 1984. FIR was registered on 3rd January, 2018.

2 Applicant preferred application for anticipatory bail before Sessions Court, which was rejected. Thereafter another application was rejected after charge – sheet was filed against the other accused.

3 The case of the prosecution is that on 3rd January, 2018 at about 10:00 a.m., 25 to 30 persons gathered holding flags in their hands and they raised the slogans and went towards Vikhroli Station and on reaching railway station, they abused people. Police controlled the mob. Thereafter, at about 1:30 p.m. when the informant and others were standing near Malvan Samudra Hotel, at that time the applicant and about 40 to 50 persons holding sticks, iron pipe raised the slogans saying that they would retaliate incident of Bhima Koregaon. They went towards station. The applicant and others entered into Vega Guest House. They damaged the cars and other two wheelers parked in front of said guest house by iron pipe and sticks. It also appears that the applicant and others pointed at complainant stating that he belongs to RSS. The persons from RSS have killed our people and he should be killed. The mob was instigated to cause damage to vehicles. The mob then caused damage to vehicles. The complainant was assaulted by applicant by hitting on his head by paver block. The mob then started pelting stones on the houses. The complainant managed to hide himself.

4 Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The injuries

caused are not serious. Offence under Section 307 of IPC is not made out. It is submitted that the land developer who are interested in grabbing the land were instrumental for dragging the applicant and the entire family in the crime. It is submitted that the other persons who were arrested were also granted anticipatory bail and bail. It is submitted that the wife of the applicant has also filed a private complaint alleging the offences under the Atrocities Act, in which directions has been issued by the Court and MECR has been registered in view of the complaint. The accused in the said case had preferred application for anticipatory bail which was opposed by applicant's wife. Police had filed report opposing the application which supported the case of applicant's wife. It is prayed that considering the alleged act, custodial interrogation of the applicant is not necessary. Applicant has been targeted since he belonging to certain community. Charge-sheet is filed against arrested accused.

5 Learned APP submits that specific role has been attributed to the applicant. Several persons are involved in the crime. The manner in which the incident had occurred and its magnitude has to be taken into consideration. Statement of

several witnesses are recorded. CCTV Footage also indicate the presence of the applicant in the crime. The involvement of the applicant is stipulated in the statement of the complainant and other witnesses. Submission advanced by the learned counsel for the applicant cannot be accepted at this stage. He therefore submitted that the application be rejected.

6 I have perused the documents on record. FIR was registered on 3rd January, 2018. it appears that the applicant had preferred two application for anticipatory bail, which were rejected. In the meantime, some of the accused were arrested and they were granted bail. It is also apparent that some of the family members of the applicant have also filed anticipatory bail application, which was allowed. On perusal of the FIR, it is clear that applicant was present at the scene of the offence and has been attributed overtact of assaulting complainant. Charge-sheet has been filed against the arrested accused, which also indicate the involvement of the applicant in the crime. According to the prosecution, CCTV Footage also shows the overtact committed by the applicant. Applicant has been attributed role of instigating the mob which had committed the acts, as stated in the FIR. There are eye witnesses to the incident. Considering the

aforesaid circumstances and the role attributed to the present applicant, no case for grant of anticipatory bail is made out. Hence, Anticipatory Bail Application No.2528 of 2018, is rejected.

(PRAKASH D. NAIK, J.)