

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.569 OF 2019

Dnyaneshwar Ramdas Bhoir, Age 52 years,
Occ.Agriculturist, R/o.Mathagao, Sagar Shrusti
Apartment, Dombivali, District Thane.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Kabul Singh Labana for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th March 2019

PC :

1. 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, 323, 452, 143, 144, 145, 149, 504 and 506 read with 34 of Indian Penal Code and under Sections 37(1) and 135 of Maharashtra Police Act r/w Section 4, 25 of Bombay Police Act. Applicant was arrested on 7th December, 2017. 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 inimical with the complainant and his family members on account of 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, 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 rear portion of head of the complainant. Accused no.2 assaulted by iron rod on his shoulder and accused no.4 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. FIR was registered 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 overt act 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 22nd October, 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 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, Vijay Bhoir and Vaibhav have been granted bail by this Court. It is submitted that the applicant is also entitled for bail on the ground of parity. There is no injury on the back of head of the complainant. Kalpesh Patil has alleged that he was assaulted by iron rod and not by chopper.

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 have 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. The case of applicant can be distinguished from co-accused. Weapons were recovered from applicant. It is, therefore, submitted that the application for bail may not be granted.

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, 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. 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 iron rod on his shoulder. 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 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. It would be pertinent to note that all the other witnesses had not attributed specific overt act to accused assaulting Kalpesh Patil and bail was granted to some of the accused considering the absence of specific overt act to them. Ajoy Bhoir and Vijay Bhoir are granted bail. Applicant is in custody from 7th December 2017. The statement of Kalpesh recorded on 22nd June 2018 appears to be improvised version. Injury certificate of Nana Patil do not indicate injury on left side of back of head. Kalpesh Patil has stated that applicant was holding chopper and along with others he assaulted the complainant and he was assaulted by applicant with iron rod. It is not clear as to how he was in possession of iron rod since he was allegedly holding chopper. The complainant has stated that accused nos.1 to 10 have assaulted Kalpesh Patil by sticks, iron rod etc. No specific overt act was attributed. Considering the aforesaid circumstances as stated hereinabove, case for grant of bail is made out.

7. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No.569 of 2019 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;
- (iii) 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;
- (iv) Applicant shall not tamper with the evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for any reason;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)

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