

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

ANTICIPATORY BAIL APPLICATION NO.109 OF 2020

Dattaji Vilasrao Tipugade	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Anand S. Patil, Advocate for the Applicant.
Mr.M.G. Patil, APP for the Respondent – State.
S.T. Bambare, PN, Juna Rajwada Police Station, Kolhapur,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 16, 2020.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.498 of 2019, registered with Juna Rajwada Police Station, Kolhapur for the offence punishable under Section 304 read with 34 of Indian Penal Code (“IPC”, for short).

2 First Information Report (“FIR”, for short) was lodged by Swapnil Chandrakant Patil on 11th December, 2019. It was alleged that the complainant and his friend Ajay Patil had gone to Rankala Lake on motorcycle. They approached the ice cream vendor. The ice cream vendor refused to provide them ice cream.

The vendor told them that they should wait till his employer comes. The complainant and his friend left the place. While they were proceeding, they were assaulted. The complainant fell down on the road in an injured condition. He saw two persons with sharp weapons. One of them was aged about 50 years and the other was a young boy. The young boy threatened them that he would not spare them alive. He assaulted Ajay by giving blow of weapons on his head. Ajay fell down. Other person assaulted complainant by sharp weapons on his head. The complainant prevented the attack, but, sustained injury behind his ear. Both of them fell on the road in an injured condition. Subsequently, FIR was lodged. The other accused had surrendered to the police.

3 Applicant preferred an anticipatory bail application before the Sessions Court, which has been rejected.

4 Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case on account of political rivalry. Applicant is ex-corporator of the area. It is further submitted that there was a CCTV Footage of the incident. The said footage, was not very clear, however, the persons seen in the said footage were not holding any weapons. It is further

submitted that the victim had suffered minor injuries and the offence under Section 307 would not be attracted. Considering the nature of injuries, the offences, which could be made out against the applicant, could be at the most under Section 324 of IPC, which is bailable. He pointed out the injury sustained by the complainant and his friend. He further submitted that the other accused is in custody and custodial interrogation of the applicant is not necessary. There was no motive for the applicant to assault the complainant and his friend.

5 Learned APP submitted that there is sufficient evidence against the applicant. The description of the assailants is mentioned in the complaint. The friend of the complainant, Ajay, was also assaulted. He has named the assailants. Both of them were armed with sharp weapons. The injured persons were assaulted by weapons. The manner in which they were assaulted would attract Section 307 of IPC. This is not the stage to evaluate the evidence to determine what offence is made out against the accused, as it would be a matter of trial.

6 I have perused the FIR. Statements of complainant, injured Ajay and the vendor who was selling the ice cream were

recorded. The vendor in his statement has stated that there was altercation between him and the accused. The accused pulled the cart and asked him who is owner. The vendor, therefore, called the accused, who came to the place of quarrel. Thus, there is motive for the applicants to commit crime. I have perused the injury certificate of complainant and his friend Ajay Vilas Patil. Swapnil Patil had sustained three injuries. There was contusion lacerated wound with sharp weapons. There was contusion lacerated wound in occipital region and there was contusion laceration. The reason for the said injuries was blow by sharp and blunt object. The injury certificate of Ajay Vilas Patil also mentions that he has sustained CLW on forehead and lambda region with sharp and blunt object. The injured persons were admitted in hospital and subsequently discharged.

7 The contention of the learned counsel for the applicant is that assuming that the role attributed to the applicant is accepted, the injuries are simple in nature, and therefore, Section 307 would not be attracted. He submitted that the offence under Section 324 of IPC is bailable. In the present case, the accused were armed with sharp weapons. It is stated by the injured and the complainant that they were assaulted by

sharp weapons on the head. There are injuries on occipital region as well as the injury behind ear. Considering the manner and the weapons by which the victims were assaulted, this is not the stage to evaluate as to what offence is made out. The co-accused were arrested and knife was recovered from their possession. Considering the factual matrix of the case, anticipatory bail cannot be granted to applicant. Hence, anticipatory bail application is rejected.

8 Learned counsel for the applicant, at this stage, submits that the applicant may be granted one week time to surrender. In view of the submissions, the applicant is permitted to surrender before the investigating officer on 24th January, 2020 at 11:00 a.m.

(PRAKASH D. NAIK, J.)