

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

RajeP.
Aher

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**ANTICIPATORY BAIL APPLICATION NO. 1111 OF 2020
WITH
INTERIM APPLICATION NO. 234 OF 2021**

Vishwanath Balaram Mhatre ...Applicant
Versus
The State of Maharashtra ...Respondent

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Mr. Nilesh Pandey i/b Equa Juris, Advocate for the Applicant.
Mr. Ashok Kumar Dubey i/b SAVJ Laws Solutions, Advocate for the
Applicant in Interim Application.
Mr. Y. M. Nakhwa, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 12th FEBRUARY, 2021.**

PC :

1. This is an application for bail in connection with C.R. No. I-57 Of 2020 registered with Bhiwandi Taluka Police Station. The first information Report (for short 'FIR') was lodged on 15th March 2020 for the offence punishable under Sections 324, 143, 144, 147, 148, 504, 506 and 427 of Indian Penal Code. Subsequently, Section 326 was invoked and thereafter, Section 307 of Indian Penal Code was also invoked.

2. The brief facts as alleged in the FIR are as follows:-

a) The complainant, Ranjeet Mhatre, resident of Dandekar

Wadi, Taluka Bhiwandi, earns his livelihood by conducting business in his shop. There are disputes relating to property between the complainant's family and his uncle Sukrya Mhatre. In that regard case is pending in the Court of Thane.

b) On 14th March 2020, at about 9.00 p.m., the complainant closed his shop and he was proceeding to his house by his car. Suddenly, his cousin, Santosh Sukrya Mhatre threw stone on the glass of the door of car. Thereafter, Vishwanath Balaram Mhatre, Vilas Balaram Mhatre, Sukrya Sitaram Mhatre, Vikesh Arun Mhatre, Arun Sitaram Mhatre, Dipesh Arun Mhatre, Bhushan Santosh Mhatre and Sujal Santosh Mhatre, started assaulting the complainant. Vikesh assaulted him with a blow of bat on his head. Dipesh also assaulted him. At that time, brother of complainant, Shivaji Mhatre intervened to save him. Vishwanath was armed with sharp weapon and he assaulted Shivaji on his head, which resulted in bleeding. Santosh, Sukrya, Vilas assaulted the complainant with kick blows. He was abused and threatened. Shivaji sustained head injury and he was taken to IGM Hospital for treatment.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 3rd December 2020.

4. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The offence was registered under Section 324 of the IPC, which was subsequently altered to Section 326 of IPC and thereafter, it was altered to Section 307 of IPC. The applicant is implicated on account of enmity. There is delay in lodging FIR. The applicant was not present at the scene of offence at the relevant time and he had not participated in the crime. This is evident from CCTV footage. The statement of injured was recorded belatedly. There are no criminal antecedents against the applicant. He is a Sarpanch of village Sonale. He was director of APMC, Bhiwandi. Co-accused Sukrya, Vikesh and Arun have been granted regular bail. All the weapons were recovered at the instance of the co-accused. The complaint has been concocted. The offence under Section 307 of the IPC is not made out. CCTV footage shows that the applicant and his family had gone to marketing at Bhawandi in his car and returned home at 9.30 p.m. Reliance is placed on CCTV footage print. The presence of the applicant in Bhiwandi market which is at the distance of 8 km from his house/village in the shop of Ms. Bhau Ganpat & Co. is visible in the CCTV footage. The footages were handed over to the investigating officer vide application dated 13th May 2020 and 15th September 2020, which exonerate from the crime and which shows that he was not present

at the place of incident. The complainant is habitual in filing false complaints. Custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that specific role has been attributed to the applicant. He was armed with sharp weapon. He had participated in the assault. He has been named in the FIR. The offence is of serious nature. Custodial interrogation is necessary. The applicant is main accused. He has caused grievous injuries to the complainant.

6. Learned advocate for intervener has also opposed grant of relief to the applicant. It is submitted that the involvement of the applicant has been disclosed in the FIR. He was armed with weapon. The complainant has filed intervention application. The offence is of serious nature. In prosecution of common object, the applicant has assaulted the complainant. The application for anticipatory bail was rejected by the Sessions Court twice. The applicant was moving freely in the society and threatening the complainant. The intervener has approached Bhiwandi Taluka Police Station to lodge the complaint against the applicant. The applicant has threatened the intervener and complaint was made to Superintendent of Police, Rural Thane, on 15th January 2021. Reliance placed on the copy of complaint addressed to Superintendent of Police, Rural Thane. He is a habitual offender. Various complaints are lodged against him. The

injured has sustained serious injuries, which is evident from the photographs annexed to intervention application. Shivaji Mhatre (injured) had sustained CLW on right side at parietal & temporal region, CLW on 3rd web space right hand 2x0.5x0.5 cm. There is injury in the nature of parietal convexity. The injuries were grievous in nature. The multi-planar spiral C.T. Scan of brain (plain) report refers to nature of injuries sustained by the injured. In the event anticipatory bail granted to the applicant, he would tamper with the evidence.

7. I have perused the FIR and other documents on record. I have perused the injury certificate. The injury report of Ayush Hospital relating to the injuries sustained on Shivaji Mhatre mentions that the patient has sustained following injuries:-

1. CLW on right side of parietal & temporal region.
2. CLW on 3rd web space right hand 2x0.5x0.5 cm
3. Breach in skull bone.
4. CT brain(P)-Thin acute SPH over right frontoparietal and parietal convexity mild & A.H. minimally displaced comminuted segmental fracture of right parietal bone with scalp hematoma.

Above mentioned injuries are grievous in nature.

8. I have perused the statement of Shivaji Mhatre, who is injured person. He has categorically stated that the applicant had intervened during the assault by the co-accused. He was armed with sword and gave blow by the weapon on his head. Supplementary statement of injured also recorded on 8th May 2020. There are eye witnesses to the incident. The report of medical officer regarding injuries of Shivaji Mhatre indicates that he has sustained injury to his head, by sharp and hard object, which is in the nature of grievous. The defence of alibi cannot be accepted at this stage. Hence, no case for grant of anticipatory bail is made out. Hence, the following order:-

ORDER

1. ABA 1111 of 2020 is rejected.
2. At this stage learned counsel for applicant submits that the applicant proposes to challenge this order before Supreme Court. Hence, interim protection granted by this Court on 14th January 2021 may be extended for a period of four weeks. In view of the submission, interim protection granted by this Court is extended for a period of four weeks from today.
3. Application for anticipatory bail and interim application stand disposed of.

4. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)