

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1331 OF 2022

1. Sameer Satyawar Thale	
2. Swapnil Satyawar Thale	
3. Santosh Shankar Tandel	.. Applicants
Versus	
The State of Maharashtra	.. Respondent
.....	
• Mr. Nitin H. Sejpai for the Applicants	
• Mr. S.H. Yadav, APP for the State	
• Mr. R.B. Alhat, API, Shrivardhan Police Station	
.....	

CORAM : MILIND N. JADHAV, J.

Reserved on : APRIL 17, 2022

Pronounced on : APRIL 20, 2022

P.C.:

1. The Applicants are apprehending arrest in Crime No. I-0031/2022 registered with Shrivardhan Police Station under Section 307, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

2. The incident is of 26.04.2022. The FIR is lodged by one Sujata - complainant who is the mother of injured Rupesh. It is alleged in the FIR that on 24.04.2022 at around 08.00 p.m. her son Rupesh visited the market near her house for purchasing eggs; that she was alerted by her granddaughter about her father Rupesh being assaulted and having gone to the police station and asked her to visit the police station; she visited the police station and saw the injured Rupesh. It is

further alleged that Rupesh informed her that while he was returning from the market sitting pillion on the motorcycle of Prashant Shetye, the Applicant No. 1 caught hold of his shirt from behind and pushed him to the ground; thereafter the Applicant No. 1 assaulted him with kicks and fist blows threatening him for his life as he was to depose as a witness in the court against the Applicant No. 1 in an offence registered under Section 307 IPC; that when this skirmish took place, Prashant Shetye and those other present at the incident spot separated both of them; that thereafter Applicant No. 1 made a phone call pursuant to which the Applicant Nos. 2 and 3 arrived at the incident spot; that the Applicant No.1 threatened Prashant Shetye and did not allow Rupesh to ride pillion on his motorcycle and warned Prashant Shetye from giving him a ride; that thereafter Rupesh walked away from the incident spot and as he was walking on the road near the Panchayat Samiti office, at that time the Applicants arrived and started beating Rupesh with a fighter (weapon) on his face, head and chest. The Applicant No. 3 also beat up Rupesh with fist; at that time the Applicant No. 1 lifted a stone lying nearby and uttered that he shall finish the programme of Rupesh but at that time others present at the second incident spot namely Amar Kadam, Prashant Shetye and many others stopped Applicant No. 1 and the stone was thrown away; that thereafter Rupesh was taken to the Police Station by Amar Kadam on his motorcycle for lodging the complaint but looking at his injuries he

was referred to the Sub-district Hospital Shrivardhan; from there Rupesh was taken to Civil Hospital, Alibaug for further treatment and thereafter taken / referred for treatment to KEM Hospital where he was admitted for two days. The above report has been lodged by Rupesh's mother Sujata i.e. the first informant against the Applicants.

3. Mr. Yadav, learned APP appearing for the State has stated that there is a cross-complaint filed by the Applicant No. 1 against Rupesh and 12 other persons along with medical certificate of the Applicant No. 1 dated 02.05.2022. The cross-complaint filed by the Applicant No. 1 is dated 25.04.2022 (19:45 Hrs) under Sections 323, 327, 143, 147, 504 and 506 IPC. The FIR in the present case is lodged on 26.04.2022 at 20.01 hours. Incidentally in the cross-complaint it is stated that Rupesh had also made a phone call after the first incident / altercation at the first incident spot and at that time Roshan Suresh Borkar, Prasad Chandrakant Borkar, Omkar Ramakant Borkar, Suyog Suresh Salunkhe, Subodh Suresh Salunkhe, Ruperi Rupesh Mayekar, Roshani Roshan Borkar, Dakshata Prakash Borkar, Sujata Shantaram Mayekar, Ranjita Ramakant Borkar had arrived; that there was a skirmish and abusing between those present and Rupesh is accused of stealing a gold chain of the Applicant No. 1 and one Pranil Chandrakant Borkar is accused of stealing Rs. 6000/- from the Applicant No. 1.

4. Mr. Sejpai, learned counsel appearing for the Applicants submits that no offence is made out for attracting the provisions of Section 307 in the present case; that due to the enmity and acrimony that had arisen because Rupesh was going to depose as a witness against the Applicant No. 1, the skirmish and the two incidents on the first incident spot in the market and near the Grampanchayat office occurred, but to allege and apply the provisions of Section 307 to the facts and circumstances of the present case is preposterous as there was never any malafide intention, motive on the part of the Applicants to murder and / or kill and / or attempt to murder Rupesh. He submits that, as alleged, no weapons have been used save and except that the incident had occurred with fists and kick blows. He submits that the medical evidence does not support the prosecution case to bring the incident under the ambit of Section 307 r/w Section 34 IPC and at the highest when complaints and cross-complaints are registered by both groups, it is incumbent upon the prosecution to investigate all possibilities and witnesses; that in the present case there are several witnesses on either side who have witnessed the incidents but the provisions of Section 307 are too far fetched to be applied to the facts of the present case.

5. Mr. Yadav, learned APP for the prosecution submits that the Applicants are habitual criminals; that as against the Applicant No. 1

there are five cases registered under the IPC for various crimes punishable under Sections 353, 307, 143 IPC; that as against the Applicant No. 2 there are five cases registered under the IPC for various crimes punishable under Sections 353, 307, 143 IPC; and that as against the Applicant No. 3 there are three cases registered under the IPC for various crimes registered and in such circumstances in order to prevent Rupesh (injured) from deposing against the Applicant No. 1, the present offence has been committed; that the offence amounts to threatening a witness for life and is a serious offence where the witness (Rupesh) has sustained a head injury for which he has been treated in the hospital / admitted to the hospital for two days.

6. I have heard the rival contentions and learned counsel appearing for the respective parties and considered the material on record. I have also perused the order dated 06.05.2022 passed by the learned sessions court while rejecting the anticipatory bail application of the Applicants.

7. It is seen that though it is alleged that there was a weapon used by the Applicants, the said weapon has not been recovered; therefore it would be wrong to presume that a deadly weapon has been used by the Applicants in the present case. Mr. Yadav has placed before me report dated 17.05.2022 prepared by the Investigating Officer (I.O.).

The said report apart from commenting on the present incident refers to the antecedents of the Applicants and it is submitted that they are habitual criminals having a reign of terror in the minds of the people in Shrivardhan town / city and that there is every possibility that the Applicants will threaten and attempt to influence the witnesses in the present case. I have considered the said report but in so far as the incident in the present case is concerned, there is nothing in the report which highlights the two incidents which took place between the parties. Annexed to the report is the medical injury report dated 01.05.2022 given by KEM Hospital, Mumbai. In the said report the history in brief is stated as given by Rupesh (injured) as being assaulted by five unknown people on 24.04.2022 at around 09.00 p.m. by fist and legs. This is an important aspect because it does not refer to any weapon. That apart the nature of two injuries as recorded on 01.05.2022 i.e. seven days after the actual incident date is critical; that the first injury is an abrasion admeasruing 0.5 x 0.5 cm. on the face caused by a blunt object and is simple in nature whereas the second injury is a bite mark of 1.0 cm x 1.0 cm over the left hand caused by a blunt object and is simple in nature. Annexed to the report is the medical history of the treatment of Rupesh (injured) which when read does not refer to use of any weapon; the discharge summary of KEM Hospital refers to the clinical history and once again reiterates the assault by five known persons and once gain reiterates

that the assault on 24.04.2022 is by fist and legs leading to trauma to the head, trauma to the chest and trauma to the left middle finger (the bite mark). The nature of the injuries from the medical evidence placed on record do not show causation of grievous hurt at all.

8. From the above it is clear that there is ambiguity about the use of the weapon as at present. Further investigation may be required from the prosecution side. Equally the medical evidence at this stage does not support the case of the prosecution and hence no purpose will be served by apprehending the Applicants and incarcerating them in prison. However considering that the Applicants have antecedents which have been brought out in the report dated 17.05.2022 filed by the I.O. and in view of the above discussion and findings, the following order is passed:

ORDER

- (i) In the event of the arrest of the Applicants in connection with Crime No. I-0031/2022 registered with Srivardhan Police Station; the Applicant No. 1 - Sameer Satyawar Thale, Applicant No. 2 - Swapnil Satyawar Thale and Applicant No. 3 - Santosh Shankar Tandel be released on bail on executing a P.R. bond in the sum of Rs. 25,000/- each with one or more solvent sureties in the like amount;
- (ii) The Applicants are prevented from entering the area under

the jurisdiction of Shrivardhan Police station for a period of six months from today and or until the chargesheet is filed, whichever is earlier;

(iii) The Applicants shall report to the concerned Investigating Officer twice a week on every Tuesday and Saturday between 12 noon to 02.00 p.m. and as and when required and called by the I.O. and shall co-operate with the investigating agency; for this purpose only the Applicants are permitted to enter the jurisdiction of Shrivardhan Police Station;

(iv) The Applicants shall not tamper with, threaten or attempt to influence any of the prosecution witnesses / evidence.

9. With the above directions, the Anticipatory Bail Application stands disposed of.

[MILIND N. JADHAV, J.]

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