

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

ANTICIPATORY BAIL APPLICATION NO. 380 OF 2023

Mahendra Vasant Bhoir ..Applicant

vs.

The State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO. 703 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 380 OF 2023**

Dipesh Batiram Joshi ..Intervenor/Ori.Informant

In the matter between

Mahendra Vasant Bhoir ..Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Vikas Shivarkar – Advocates for Applicant.
Ms.Anjali Awasthi i/b. Mr.Bushra Sayed – Advocate for Intervenor.
Mr.S.R.Agarkar – APP for the Respondent – State.
Mr.M.V.Chaudhari – API – Vitthalwadi Police Station – Thane City.

CORAM : S. M. MODAK, J.

DATED : 12TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned Advocate for the First-Informant, so also, learned APP for Respondent-State. Investigating Officer is present.

2. Mr.Shivarkar and Ms.Awasthi argued vehemently in support of their contentions. According to Ms.Awasthi, custodial interrogation of this Applicant is required. Though no specific role is assigned to him, he is named in the FIR. It is submitted that the provisions of Section 149 of Indian Penal Code, 1860 [“IPC”] are invoked and in such a case, how the evidence is to be appreciated is interpreted by the Hon’ble Supreme Court in case of *Yunis Alias Kariya V/s. State of M.P.*¹. She invited my attention to the observations in Paragraph Nos.5 to 8.

3. It is true that when the provisions of ‘*unlawful assembly*’ are invoked, as per Section 149 of IPC, every member of unlawful assembly is equally liable. With great respect, this ratio can be made applicable when the evidence will be appreciated. At this stage, we have to consider whether the custodial interrogation is required or not.

4. For two reasons, I am inclined to confirm the interim protection which is granted by this Court on 8th February, 2023. One is the present First-Informant has not assigned any role to the present Applicant and second is there is counter FIR lodged by one

1 (2003) 1 Supreme Court Cases 425

Mahesh Vasant Bhoir against several Accused persons and the present First-Informant is one of them. It is to the same Vitthalwadi Police Station on 13th December, 2022 under Sections 324, 504, 506, 143, 147, 148, 149 of IPC.

5. The Applicant has produced certain C.C.T.V, footages recorded from the cameras installed at the spot. Learned APP from the papers pointed out to me certain photographs. It seems that certain persons are inspecting the work undertaken for erection of the drainage line. It seems that one person is shown as assaulting another person. There is also one more photograph which shows that the witness Ajay Joshi has fallen down on the ground. There is one more photograph which shows that the persons are leaving from the spot. From all these photographs, the Prosecution could not show that the present Applicant is one of them.

6. Learned Advocate Ms.Awasthi submitted that her client is also having certain C.C.T.V, footages from the cameras installed at the spot and she is having instructions that in those footages, the Applicant is shown as one of the assailant. The Police are investigating into the offence since December-2002. Up till now, the First-Informant ought to have produced those footages to the Police.

7. The Applicant has already given attendance to the Police Station as ordered on 8th February, 2023. So, I find that case is made out for confirming the interim protection. Hence, order :-

O R D E R

- (i) An interim protection granted on 8th February, 2023 is confirmed subject to the same conditions.

8. Application is disposed of accordingly.

9. In view of above circumstances, Interim Application is also disposed of.

10. All the parties to act on an authenticated copy of this order.

11. These are my *prima facie* observations. Let learned trial Court need not be influenced by them.

[S. M. MODAK, J.]