

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3162 OF 2023

Vishal Mahadev Nalawade	...Applicant
vs.	
The State of Maharashtra	...Respondent

Ms. Manisha Devkar a/w. Mr. Shankar Katkar and Ms. Siddhi Patil,
for the Applicant.

Mr. M.G. Patil, APP, for the Respondent/State.

Mr. A.A. Waghmode, PSI, Mhaswad police station.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 8, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. This application is preferred seeking pre-arrest bail in
connection with C.R. No.50 of 2023 registered at Mhaswad police
station for the offences punishable under sections 307, 324, 143,
147, 148, 149 and 427 of Indian penal Code, 1860.

3. To repair his house, the first informant had hired mason and
labourers, who were residents of other villages. The first informant
alleged, the applicant and the co-accused had formed an unlawful
assembly with the common object of assaulting those masons and
labourers. While those persons took shelter in the house of the first

informant, the co-accused Sagar Gorad, the applicant Vishal, and other named accused followed them armed with dangerous weapons. The applicant had allegedly assaulted the first informant by means of stick on his back, hands, legs and head. To save himself, the first informant took shelter in the house of Datta Jadhav. The members of the unlawful assembly thereafter assaulted his wife and son Mitesh.

4. Apprehending arrest, the applicant approached the Court of Session. The learned Session Judge declined to exercise the discretion in favour of the applicant.

5. The learned counsel for the applicant submitted that out of 17 persons who were identified as members of the unlawful assembly, 8 have been granted pre-arrest bail and 8 have been released on regular bail. The applicant is the only person who has been denied the dispensation of pre-arrest bail. Role attributed to the applicant is not materially distinct.

6. As against this, the learned APP submitted that the applicant and the co-accused had assaulted the first informant, his wife and the son. Specific allegations of assault by means of stick on the first informant, his wife and son are attributed to the applicant. Therefore, the applicant does not deserves the discretion.

7. I have perused the injury certificates of the first informant,

his wife and son. It does not appear that any of the injured had sustained any grievous injury. In an occurrence of this nature, where 25 persons allegedly committed the offence of rioting, the question of invoking the constructive criminality with reference to section 149 of the Indian Penal Code qua each of the accused, may warrant adjudication. Since none of the injured had sustained any grievous injury, I am persuaded to exercise the discretion in favour of the applicant.

8. In the event of arrest in C.R. No.50 of 2023 registered with Mhaswad police station, the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

9. The applicant shall cooperate with the investigation and attend Mhaswad police station, on 20th, 21st and 22nd November, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

10. The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

11. The applicant shall regularly attend the proceedings before the jurisdictional Court.

12. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)