

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

ANTICIPATORY BAIL APPLICATION NO. 1183 OF 2023

Vasant Laxmanrao Magar	..Applicant
Versus	
The State of Maharashtra & Anr.	..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1157 OF 2023**

Bhaurao Rajaram Kachre	..Applicant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Satyajit Dighe for applicant in ABA/1183/23.

Mr. Abhishek Yende a/w. Shubham Kahite a/w. Surbhi Agrawal i/b.
Yende Legal Associates for Applicant in ABA/1157/23.

Mr. Avinash A. Naik, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 29 FEBRUARY 2024**

P.C. :

1. Both these applications are decided by this common order because they arise out of the same registered offence.
2. The Applicants are seeking anticipatory bail in connection with C.R.No. 71 of 2023 registered at Vadivarhe Police

Station, Nashik Rural, on 18.03.2023, under sections 307, 435, 504, 506 r/w. 34 of the Indian Penal Code and under sections 3 and 27 of the Arms Act.

3. Heard Mr. Satyajit Dighe, learned counsel for the applicant in ABA/1183/23, Mr. Abhishek Yende, learned counsel for the Applicant in ABA/1157/23 and Mr. Avinash Naik, learned APP for the State.

4. The F.I.R. is lodged by one Samadhan Ahire. He has stated that, he was working as a care taker in Gat No.486/2 at Pimpalad. It was owned by M/s. Gajra Brothers. Hemant Parakh and Rajendra Parakh were the partners, as well as, owners of that agricultural land. There was a dispute regarding that land between those Parakh brothers and the applicant Vasant Magar.

5. On 17.03.2023, the informant and the other workers were present on that land, in a tin shed. At around 11.00p.m. they heard loud shouts. They came out on the road and saw that some people were shouting loudly and were hurling abuses. They were asking that the land belonged to the applicant Vasant Magar and that Parakh brothers should be asked to vacate the land. The

applicant Vasant was present there. He told one of them to fire bullets. One of them started firing at the informant and others. They tried to save themselves by hiding behind some structures. The informant and his companion Sunil Kharate recognized the person who was firing and another person with him. Their names were Anil Satpute and Anand Shinde. Out of them, Anil Satpute had fired at the informant and others. Anand had chased the informant's group with a sickle in his hand. The other two were shouting loudly and were abusing the informant and his group. Then they set a two wheeler on fire. After that, they left the place. Some of the bullets hit the board and one of the bullet hit a tree. The informant called Rajendra and told him about the incident. Thereafter the F.I.R. was lodged.

6. Learned counsel for the applicant Vasant Magar submitted that there was a civil dispute between the applicant Vasant and Parakh brothers. This F.I.R. is lodged with malafide intention to pressurise the applicant. He further submitted that the applicant had made an application in the nature of complaint on 06.03.2023 to the Superintendent of Police, Nashik Rural against

Rajendra Parakh and Hemant Parakh. His complaint was about destruction of some property belonging to the applicant Vasant. He had also complained that these Parakh brothers had threatened to commit his murder. He submitted that, in this background, it has to be seen that this false case was lodged. He submitted that the applicant is 72 year old man and his custodial interrogation is not necessary. Nobody from the informant's group had suffered any injury. Therefore, there was no intention to commit murder. Section 307 of the I.P.C. is not made out.

7. Learned counsel for the other applicant Bhaurao Kachre submitted that, there was a delay in lodging the F.I.R. The incident had occurred in the night on 17.03.2023 and the F.I.R. was lodged at around 10.00p.m. on 18.03.2023. The F.I.R. does not mention presence of the present applicant Bhaurao, but his name is introduced by the alleged eye witnesses in their statements which were recorded on 20.03.2023. Thus, it clearly shows that there was an afterthought to involve the present applicant. He submitted that the applicant Bhaurao had lost his one leg and there is disability certificate issued showing that he is

80% disabled. Therefore, it was not possible for him to have committed this offence. He further submitted that the applicant had some civil dispute with one of the witnesses and, therefore, it could be a possible reason for his false implication. He submitted that, his name was first time disclosed in the remand report of the co-accused on 31.03.2023. This further shows that he was implicated as an afterthought.

8. Learned APP opposed these submissions. Learned APP produced the investigation papers before me. He submitted that, there are statements of eye witnesses Sunil Kharate and Bhoru Kharate which are recorded U/s.164 of the Cr.p.c. In these statements, they have named both these applicants. However, the first informant in his statement U/s.164 of the Cr.p.c. has not named the applicant Bhaurao Kachre. Learned APP submitted that, Bhaurao's name was disclosed by the co-accused Gokul Bombale and Anand Shinde when they had given statements U/s.27 of the Evidence Act. The prosecution case is that the applicant Vasant had given money to the applicant Bhaurao to engage the assailants Anand Shinde and Gokul Bombale. The applicant Vasant had paid

Rs.4 lakhs to the applicant Bhaurao. The statements of the eye witnesses Sunil Kharate and Bhoru Kharate support the informant's case and in addition, they have mentioned the presence of the applicant Bhaurao. However, their statements were recorded on 20.03.2023. There is some substance in the submissions of learned counsel for the applicant Bhaurao that his name is introduced subsequently as an afterthought. The statements of the co-accused Gokul and Anand recorded U/s.27 of the Evidence Act were recorded after their arrest on 29.03.2023 and 02.04.2023. Therefore, some reasonable doubt is created about the applicant Bhaurao's participation. In addition to this, he has disability to the extent of 80% and has lost his leg. Considering all these factors, I am inclined to protect him U/s.438 of the Cr.p.c.

9. However, as far as the applicant Vasant is concerned, his role is quite serious. He was present at the spot. He had instigated others. At his instance, bullets were fired. The spot panchanama shows presence of empties and bullet marks on the tree and the board. This corroborates the prosecution case. There were signs of burning of a two wheeler. The informant and

the eye witnesses have consistently named the applicant Vasant. He had a motive and he was present at the spot. Therefore, his role is quite serious. In this view of the matter, considering the gravity and seriousness of the matter, applicant Vasant cannot be protected U/s.438 of the Cr.p.c.

10. Hence, the following order :

ORDER

- i) Anticipatory Bail Application No.1183 of 2023 preferred by the applicant Vasant Laxmanrao Magar is rejected.
- ii) In the event of arrest of the applicant Bhaurao Rajaram Kachare in A.B.A.No.1157 of 2023, in connection with C.R.No. 71 of 2023 registered at Vadivarhe Police Station, Nashik Rural, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- iii) The Applicant Bhaurao Kachre shall cooperate with the investigation.
- iv) Both the Applications are disposed of.

(SARANG V. KOTWAL, J.)