

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3158 OF 2015

Shaikh Najir S/o Shaikh

Mohammad

.. APPLICANT

Versus

State of Maharashtra

.. RESPONDENT

...

Shri V.D.Hon,Sr.Counsel i/b N.B.Narwade,Advocate for
applicant

Smt.P.J.Bharad,APP for respondent State

Shri S.S.Chapalgaonkar, Adv., to assist A.P.P.

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CORAM : V.M.DESHPANDE,J.

DATED : 7TH JULY, 2015

ORDER :-

This is an application for anticipatory bail since applicant is apprehending his arrest in connection with Crime No. I-141/15 registered with Kotwali police station Dist.Ahmednagar for offences punishable u/s. 307, 324, 504, 506 r.w. Section 34 of I.P.C., and u/s 3/25 of Arms Act.

2] I heard Shri V.D.Hon, learned Senior Counsel alongwith Shri N.B.Narwade, counsel for applicant, Smt.P.J.Bharad, learned A.P.P. for State and Shri

S.S.Chapalgaonkar, learned counsel for the first informant in extenso.

3] The first information report is lodged by Himmat Kalyanlal Meherwal. The F.I.R. is lodged on 9/6/2015.

It is not in dispute at all that a Civil Suit is filed against first informant by the present applicant for possession. The said Civil Suit is registered as Civil Suit No.46/15. Apart from the possession, the decree for partition is also sought in the said Civil Suit. In the said Suit first informant is one of the defendants.

It is also not in dispute that on 9/6/2015 the said Civil Suit was fixed before learned Civil Judge, Senior Division at Ahmednagar, for filing of written statement.

4] According to the first information report, on this day i.e. 9/6/2015, at 3.30 p.m. when the first informant had been to the Court of C.J.S.D. Ahmednagar for filing his written statement and after taking exit from the Court hall, the present applicant met him and used abusive words and also extended threat with dire consequences and also gave threat that the first informant will be killed by him and thereafter, present applicant left, is the allegation in the F.I.R.

5] Further statement is made in the first information report that thereafter, after some time, learned Presiding Officer called the present first informant and thereafter, he went again inside the Court hall and after obtaining the date from the learned Presiding Officer, when he was proceeding towards the chamber of his Advocate at 4 o'clock, that time, from behind, the present applicant came, used abusive words and pushed him. That time, present applicant took out a 5 to 7 inches silver pistol after using the choicest words, fired towards the first informant. However, that time, the first informant showed courage and pushed the hand of the present applicant aside. Though there was a fire, the first informant did not get any fire arm injury. That time according to first information report, the first informant was attacked by the present applicant by means of butt of the said pistol resulting into bleeding injury. Thereafter, he went to the chamber of his Advocate who gave advice to him for lodging police report and thus the F.I.R. is lodged.

6] The learned A.P.P. has made available to me the entire investigation papers. The investigation papers consist of the spot panchanama and the statement of three police witnesses. The panchanama is completely silent about noticing and/or recovery of any empty cartridge. Further the statement of the police witnesses are immediately recorded on the spot. According to these prosecution witnesses they were unable to notice any mark

that can be attributed to the fire by means of pistol either on the walls or on the ground.

However, the spot panchanama and also statement of those police witnesses show about the existence of blood stains.

7] In view of the non existence of any empty cartridge and/or noticing any mark by the police personnel on the ground or on any of the wall, it would be rather difficult to accept the version of the first informant that the fire was opened towards his direction.

8] In so far as injuries part is concerned, the injury certificate of first informant is available in the investigation papers. It shows existence of Contused Lacerated Wound admeasuring 1cm x 1¼ cm. skin deep and the injury is simple in nature. The said injury certificate is given by District Hospital, Ahmednagar. What is important to note from the said injury certificate is that the injured was sent alongwith police yadi from Kotwali police station Ahmednagar. To a query made to learned A.P.P. about the said police yadi, learned A.P.P. was unable to say anything about the said police yadi. Further the said police yadi is not part and parcel of the investigation papers.

The first informant as per prosecution case was

referred to the hospital by police alongwith contemporaneous documents. Such an important contemporaneous document is not finding place in the investigation papers. It would have thrown much light about the cause of the injury suffered by the first informant.

9] The learned A.P.P. pressed into service the statement of Anil, Milind, Nilesh Supekar and Advocate Meher.

10] Even from the first information report, it is clear that Advocate Meher is not an eye witness.

Statement of Nilesh Supekar and Milind Mobharkar are recorded on 11/6/2015. So there is a delay of two days. Further statement of Nilesh and statement of Milind show that present applicant wiped out pistol and then they heard some noise "**Phat**". Except this, their statements are completely silent. This Court has in the preceding paragraphs has observed that in view of non-existence of any empty cartridge or any other supporting material, the story of the first informant to that extent is exaggerated.

In so far as the assault by present applicant on the first informant with the help of butt of the pistol is concerned, statement of these witnesses are completely silent. In so far as the statement of Advocate Meher is concerned, it would reveal that he advised the first informant to

immediately lodge F.I.R. Not only that, but he called his associate Advocate Kulkarni madam and sent to the police station, however, till this date, statement of Advocate Kulkarni madam is not there in the first information report.

11] The prosecution case as it is pointed out in the preceding paragraph, it is clear that prior to the actual assault as alleged by first informant just outside the door of the Court hall, the present applicant has extended threat to kill the first informant and used choicest words against him, after that he entered into the Court hall. It is not the prosecution case that at that point of time, learned Presiding Judge was not available either on the Dais or in the Chamber. The immediate reaction by a person who was threatened with dire consequence, just outside the Court hall would have to immediately report the said fact to the learned Presiding Judge. Further, even after the actual incident as alleged there is no report atleast available on record in the present crime that the matter was reported either to the learned Judge in whose Court the Civil Suit was pending or it was apprised to the Principal District and Sessions Judge, Ahmednagar. In fact, the learned counsel Shri S.S.Chapalgaonkar from the instructions from the first informant who is personally present in the Court made a statement that the fact was not reported even to the Principal District and Sessions Judge, Ahmednagar.

12] On the date when the matter was fixed for filing of the written statement, normally, for filing of the written statement, presence of the plaintiff is not required. The Court is observing this in view of the fact that the first informant has exaggerated his account. Further the statements of the independent eye witnesses are also recorded belatedly. Statement of Advocate Meher does not reflect about the presence of the present applicant in the Court on the said date.

13] The learned counsel Shri S.S.Chapalgaonkar submitted that on 23rd June, 2015 , one of the witnesses by name Shri Mobharkar was assaulted and on his first information report dated 23/6/15 the offence is registered against 5-6 unknown persons. Nothing is brought on record about any enmity between this witness Mobharkar and the present applicant. In spite of that, if the first information report lodged by Mobharkar is seen which is placed on record, which will show that according to Shri Mobharkar in his first information report, he said that it is his thinking that he was assaulted because of present applicant and one M.L.A. from the region. Without there being any material on record, such statement is made. Therefore, the said complaint lodged by some third person on his mere perception cannot be used to scuttle the right of the applicant to claim anticipatory bail.

14] Over all survey of the aforesaid facts leads me to pass following order :

ORDER

A] Application is allowed. Applicant Shaikh Najir S/o Shaikh Mohammad be released on anticipatory bail in the event of his arrest in connection with Crime No. I-141/15 registered with Kotwali police Dist.Ahmednagar for offences punishable u/s. 307, 324, 504, 506 r.w. Section 34 of I.P.C., and u/s 3/25 of Arms Act. on he executing P.R. Bond of Rs.50,000/- (Rs.Fifth thousand only) with one solvent surety in the like amount.

B] The applicant shall attend Kotwali police station, Ahmednagar on alternate day from 9th July, 2015 for a period of one month and the applicant shall remain with the investigation officer from 11 a.m. to 5 p.m. in the police station for all these days.

C] Any 2(Two) consecutive default on the part of the applicant shall give cause to the first informant and also to the investigation officer to file application for cancellation of bail.

D] Further the applicant shall not cause any threat

to the first informant or his family members or any of the prosecution witnesses.

(V.M.DESHPANDE,J.)

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