

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4151 OF 2014
WITH
CRIMINAL APPLICATION NO. 4369 OF 2014

Sanjay Dayaram Jadhav

....Applicant.

Versus

Sambhaji s/o. Baburao Jadhav
and others

....Respondents.

Mr. D.B. Thoke, Advocate for applicant.

Mr. A.R. Rathod, Advocate for respondents/accused.

Mr. A.V. Deshmukh, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 4th March, 2015.

ORDER :

1) The applications are filed under section 439 (2) of Criminal Procedure Code for setting aside the order made by the learned Additional Sessions Judge, Jalgaon in Criminal Application No. 620/2014 in C.R. No. 104/2014 registered in Chalisgaon Police Station for the offence punishable under section 307 r/w. 34 of Indian Penal Code. The learned Additional Sessions Judge has granted bail. Both the sides are heard. This Court has perused the papers of investigation.

2) The incident in question took place on 6.4.2014. The

injured, present applicant – Sanjay has made allegations that on that day after 6.00 p.m. when he was proceeding on motorcycle, his motorcycle was intercepted by respondents Sambhaji, Bandu and one more associate of respondent No. 1 whose name is not known to the complainant. After intercepting the motorcycle, they made allegations against complainant that he had intentionally driven the motorcycle at them. When he tried to explain them that his motorcycle was at quite some distance from them, respondent Sambhaji pulled him from motorcycle and started assaulting him. Allegations are made that during the incident Bandu and the said unknown person started assaulting him by using fist blows and kicks. Allegations are made that during incident, present respondent - Sambhaji gave blow of knife on his abdomen and at that time, the other two accused were holding him. When others rushed, the assailants ran away. He was admitted in the hospital and the report came to be recorded in the hospital.

3) It appears that Sambhaji also gave report on the same day and he made allegations that applicant had driven the motorcycle at his wife and dash was given to his wife and she was injured. He has contended that when he attempted to question, quarrel started and he was given severe beating by

the applicant and his three unknown associates. The crime was registered for the offences punishable under sections 336, 337, 323, 149 etc. of I.P.C. at C.R. No. 106/2014 i.e. subsequent to registration of crime against Sambhaji.

4) It appears that Sambhaji had approached this Court for anticipatory bail, he had filed Criminal Application No. 2362/2014. The original complainant had filed Criminal Application No. 2599/2014 for permission to assist APP. It can be said that when the Court was not inclined to grant the relief, on 5.5.2014 the Criminal Application No. 2362/2014 was withdrawn by Sambhaji and the other accused. It appears that they had filed application for anticipatory bail directly in the High Court and so, liberty was given to them to approach Sessions Court. They filed application in Sessions Court for anticipatory bail. It appears that they could not succeed and then they filed Criminal Application No. 2666/2014 for relief of anticipatory bail again in this Court. This Court by order dated 23.6.2014 refused the relief of anticipatory bail. However, some protection was given by making following order :-

"2. Accordingly, the application is allowed to be withdrawn and stands disposed of as such. The interim protection granted earlier by this Court to the present applicants, vide order dated

9th May, 2014 is hereby continued till 1st July, 2014. It shall stand revoked after the expiry of the said period i.e. after 1st July, 2014"

This order was made by the other Hon'ble Judge of this Court.

5) After the aforesaid order made by this Court, the respondents Sambhaji and Hemant surrendered before Sessions Court and they were committed to M.C.R. On the same day, the application for bail bearing No. 620/2014 was filed. The Sessions Court granted relief of bail by the order dated 3.7.2014. The application for bail was filed on 30.6.2014. This application was opposed by the State by contending that one unknown assailant was not yet traced and custodial interrogation was necessary. The record of injury sustained by the complainant was also shown. It appears from the order made by the learned Additional Sessions Judge that some antecedents of the complainant were shown to the Court which are to the effect that in the past two crimes were registered for the offences punishable under sections 354-A and 307 of I.P.C. against the complainant. It was submitted that Sambhaji is a respectable person, working as a Gramsevak. It was submitted that there were no serious allegations against respondent Hemant as he had not used the weapon. It was submitted that when the interim protection was

granted by the High Court, the respondents had attended the concerned police station and they cooperated the investigating agency. It appears that the weapon was produced by Sambhaji when he attended the police station during the period when the interim relief was in existence.

6) It appears that some Courts of subordinate judiciary are working under the some misconception. When some protection is given to the accused after disposal of anticipatory bail application, some learned Judges of Sessions Court go with the presumption that invariably the protection needs to be given to the accused. In some cases interim orders are made and even temporary bail orders are made when the accused surrenders directly in Sessions Court. There is also misconception about the manner in which the investigation can be made. When submissions are made that as per the directions given by the Court in interim order, the accused did attend the police station and there is no complaint against him, that there was no cooperation, the Court accepts such submissions and grants relief. When the matter comes for decision, for final hearing, the circumstance that the accused had attended the police station during the period when interim relief was in existence, cannot be given much importance.

7) The Courts are expected to keep in mind the provisions of sections 41, 156, 170 and 173 of Cr.P.C. When the legislature has given statutory powers to the investigating agency, the Courts are not expected to interfere lightly in that power. Though the discretion is there to the Court to grant anticipatory bail or bail under sections 438 or 439 of Cr.P.C., that discretion is circumscribed by the aforesaid provisions, power given to police. It is noticed that many learned Judges misread provisions of sections 438 and 439 of Cr.P.C. and grant relief by holding that it is within their discretion to grant such relief. When there are serious allegations like made in the present case and the crime is registered for the offences punishable under section 307 of I.P.C. and there is the allegation that the associate of the assailant is not yet traced, the Court is expected to consider such situation. Interrogation made of the accused when he has the protection of order of Court, it is never effective. Custodial interrogation is effective and only after custodial interrogation, police can collect the relevant material. Such protection, orders make the police machinery helpless like in the present case. Further, the circumstance on which the accused is relying like the antecedents of the complainant cannot be given much weight when there is material against accused of the nature

available in the present case. The injury had caused perforation of intestine. The complainant was indoor patient for one and half months. The circumstance that he was admitted in private hospital cannot make difference and no such distinction can be made by the Court. The circumstance that he is a public servant, was working as a Gram-sevak and he was even given price by the Government for his work as Gram-sevak, cannot make much difference at the time of consideration of application filed for anticipatory bail. In the present case, though the order is made under section 439 of Cr.P.C., the respondents actually got the relief of anticipatory bail as they were not arrested. High Court had refused such relief. Ordinarily, the powers are to be exercised under section 439 of Cr.P.C. only after arrest, when accused is in custody. Otherwise anybody would surrender directly before the Sessions Court and get such relief and provisions of sections 41, 156, 170 and 173 of Cr.P.C. will become useless. The procedure which is given in Cr.P.C. needs to be followed.

8) The misconception in the mind of few Judges that after surrendering of accused in the Court, police cannot ask for police custody needs to be removed. The Courts are expected to keep in mind that even if there is protection given by the Higher

Court, when the application for bail or anticipatory bail is rejected, the investigating agency is at liberty to take the accused in custody and can make a request for police custody remand. The submissions made show that police could not complete the investigation and chargesheet is not filed.

9) In view of aforesaid circumstances and position of law, this Court holds that the relief granted in favour of respondent Sambhaji Baburao Jadhav needs to be cancelled and the order made by the learned Additional Sessions Judge need to be set aside. Considering the role played by respondent - Hemant s/o. Lahu Kale, this Court holds that it is not desirable to cancel the relief granted in his favour, though the order is apparently made after following necessary procedure. Custodial interrogation of respondent Sambhaji Jadhav is necessary. After his arrest, the investigating agency will be entitled to approach J.M.F.C. for demanding police custody.

10) In the result, the applications as against respondent - Sambhaji Baburao Jadhav are allowed. The order made in his favour by the learned Additional Sessions Judge is set aside. The relief of bail given in his favour is cancelled. He is to be arrested and committed to custody forthwith. The applications as against

respondent - Hemant Lahu Kale are rejected.

11) The learned counsel for the respondent - Sambhaji requested for stay to the order. The said request is refused.

[T.V. NALAWADE, J.]

ssc/