

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

CRIMINAL APPLICATION NO.4578 OF 2015

Thagan s/o Devrao Bhagwat Patil,
Age 35 years, Occu. Agril.,
R/o at and post Bhaigaon,
Taluka Sillod, Dist. Aurangabad

..Applicant

Versus

The State of Maharashtra,
through the Commissioner of Police,
Aurangabad

..Respondent

Mr S.G. Ladda, Advocate for applicant
Mrs M.A. Deshpande, A.P.P. for respondent
Mr Satej S. Jadhav, Advocate for complainant, assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 21st October 2015

PER COURT

Heard Mr Ladda, learned Counsel for the applicant.

2. The applicant is seeking pre-arrest bail in Crime No.I-478/2015 registered on 25th July 2015, at Mukundwadi Police Station, District Aurangabad, for offences punishable under Sections 307, 452, 323, 504 of Indian Penal Code, for an incident alleged to have taken place on 9th November 2012. The complainant Sunita, in her first information report has alleged that on 9th November 2012, at around 9.00 p.m., the applicant had been to her residence along with his accomplice and after entering into altercations, as he was under the influence of liquor has thrown her daughter Mohini (Sweety) from second floor to the ground floor resulting into causing grievous injury to her. According to prosecution, the intention of the accused was to cause death of the daughter of complainant.

3. It also transpires from the record that as the offence was not registered in the said matter though complaint was filed by the complainant immediately thereafter, the complainant was prompted to prefer Criminal Writ Petition before this Court bearing Criminal Writ Petition No.863 of 2015. Though there is no express order in the petition, however, it is an admitted position that the offence came to be registered only after the initiation of the said Criminal Writ Petition and after summoning the Officers in the said matter, calling upon their explanations.

4. Mr Ladda, while trying to make out a case for grant of pre-arrest bail has invited attention of this Court to the papers, which are placed on record in support thereof. He would urge that in the present case, the applicant is made victim of ill-conduct of the complainant and so as to substantiate the same, he has taken me through the various complaints, which according to applicant are falsely filed against him. He would then urge that after the incident alleged to have taken place on 9th November 2012, the belated first information report is filed that too after a period of about three years, without any explanation. According to him, after considering the conduct of the complainant, as against the conduct of the present applicant in the matter, it will be expressly clear that the applicant herein is falsely implicated in the crime in question.

5. In addition to above, learned Counsel for the applicant has invited attention of this Court to the statement of Dr. Vajrapani and the medical documents issued in favour of daughter of the complainant, Mohini so as to substantiate that on 9th November 2012 the medical aid was administered to Mohini at about 10.40 a.m./p.m.

6. The fact remains that said Doctor in her statement, in categorical terms has stated that it was directed to her at that point of time that the injury was caused because of fall from the upper floor of the house. Mr Ladda while emphasised the aspect as regards applicant responding to the query of Dr.Vajrapani regarding the matter for M.L.C. and the response of the complainant in negative, it is required to be noted that there is explanation to that effect, as reflected in the statement of concerned Dr. Vajrapani. Apart from above, he would then urge that the time of incident of fall from the upper floor of the house, the time of treatment and the delay in lodging the first information report speak voluminous about the conduct of the complainant to lodge false complainant in the matter.

7. While opposing the application, learned A.P.P. has invited my attention to the contents of the first information report and would submit that the offence in question came to be registered pursuant to the filing of Criminal Writ Petition No.863 of 2015. According to learned A.P.P., the complaint was well within time and even if it is presumed that the complaint for the incident of 9th November 2012 was given on 18th December 2012, still fact remains that the said

complaint contains appropriate explanation. Apart from above, learned A.P.P. has taken me through the investigation papers and would urge that there is sufficient material available against the present applicant in the matter of commission of crime. According to her, as the offence is alleged to have been committed punishable under Section 307, which is serious in nature, the application is liable to be rejected. Mr Jadhav, learned Counsel for the complainant, while assisting the learned A.P.P. was also heard who, in addition to the submission made by learned A.P.P. would urge that the applicant is after the blood of the complainant and the resistance by the present complainant to the conduct of the applicant has resulted into lodging of various crimes. He has further urged that the other offences are registered against the applicant upon the complaints preferred by the original complainant.

8. Having perused the investigation papers and having analysed the submissions made by the learned Counsel and learned A.P.P., it is required to be noted that the copy of the first information report which is placed on record at page 15 contains the overwriting at the time of registration of offence. Apart from above, it is not in dispute that there is acknowledged copy on the record which justifies the submission of the complaint, immediately after the incident with the investigating agency. Just because the investigating agency has not taken cognizance of the complaint preferred by the complainant against the present applicant, cannot be weighed in favour of present applicant for granting pre-arrest bail. The fact about the availability of

the documents, which depict the medical treatment provided to victim Mohini pursuant to the act alleged against the present applicant at the hospital of Dr. Vajrapani, the statement of Dr. Vajrapani and the subsequent statement of Dr. Kaphatiya, an Orthopedic expert speak about the happening of the event.

9. The delayed lodging of first information report can also be considered in the light of the fact that the complainant herein was required to file Criminal Writ Petition No.863 of 2015 pursuant to which investigating agency was required to file first information report in the matter is not in dispute.

10. Having regard to the overall analysis of the submissions, the investigation papers, as are available before this Court, in my opinion, there appears to be prima facie involvement of the applicant in the crime in question which prompts for custodial interrogation. As such, the application fails, stands rejected.

11. The observations made herein above are prima facie and particularly in the light of investigation papers as are perused and the learned Sessions Court shall not get influenced by these observations.

(N.W. SAMBRE, J.)