

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1642 OF 2014

Vicky Bharat Mhatre	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Prashant Naik i/b. Vrishali Raje, Advocate
for the Applicant.
Mrs. A.A. Mane, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 06, 2015

P.C.

. By this application the applicant seeks pre arrest bail in connection with C.R. No. 333 of 2013 registered with Waliv police station, Thane for offences punishable under Sections 307, 385, 143, 147, 148, 149, 341, 323, 504 and 506 of Indian Penal Code and Section 3 read with 25(1)(A) of Arms Act.

2. The said crime is registered upon the

F.I.R. lodged by one Hajrat Hussain Shaikh regarding an incident which had occurred on 31-08-2013 at about 7.30 pm. Without unnecessarily detailing, the matters from the said F.I.R. It can be said that it reveals that the first informant and his brother about 15 days back of the occurrence of the main incident were threatened by the applicant for paying Rs. 1 lac. It reveals that upon refusal of the first informant to pay money, the applicant had threatened him in presence of his brother for making payment within period of 15 days otherwise the applicant would see him.

3. The material part of F.I.R. reveals that the first informant while traveling along with his friend Mustaq Ahmed by his car was intercepted and were forced to alight the vehicle. It reveals that thereafter the applicant and his associate Bhavesh were then present on the spot and the applicant had abused the first informant for non payment of Rs.1

lac and started scuffling with him. It reveals that two more persons by name Dinesh and Umesh were also present on the spot and they forced people in the vicinity to close down the shops and thereafter had joined the applicant and Bhavesh in an assault in progress upon the first informant. It reveals that friend of first informant namely Mushtaq intervened the scuffle and then he was also assaulted. It reveals that while said assault was in progress, the applicant had taken out a firearm for firing at the first informant. The first informant had given a blow on the hand of the applicant and due to it bullet fired has struckd one Vicky Mhatre. It reveals that applicant thereon had shouted that bullet has struck the person from their group and thereafter they had fled away from the spot.

4. The learned counsel for the applicant pressed the prayer for pre arrest bail on the ground of the injured person having lodged complaint with Sub Divisional Police Officer, Waliv

police station on 06-09-2013 and upon failure of police to take cognizance thereon having filed the private complaint. The learned counsel submitted that said complaint reveals that first informant had fired a shot. He submitted that upon the complaint lodged by the said injured, the learned Magistrate has issued direction under Section 156(3) of Code of Criminal Procedure. It is urged that hence prosecution should be asked regarding steps taken in the said matter to ascertain whether the shot in question was fired by the first informant as contended in the said complaint. It is his submission that if so then the allegation levelled against the applicant would be false and as such he would be entitled for pre arrest bail. It is submitted as the police failed to take cognizance, it required some time to file private complaint and as such there is no delay on the part of said injured to move the Court.

5. It is submitted that except the allegations of commission of offence under Section 307 of Indian Penal Code, the material pertaining to the overact committed by applicant does not reveal commission of non bailable offences. As commission of offence under Section 307 of Indian Penal Code being debatable question, the prayer for pre arrest bail be favourably considered. It is urged that hardly there is any need of custodial interrogation of the applicant as all the material regarding acts allegedly committed is in the possession of investigating officer.

6. The prayer for bail is opposed by learned APP by pointing out statements of about 8 witnesses attributing the role of firing to the applicant. It is submitted that the prosecution is in possession of C.A. report revealing that bullet in question recovered from the spot was not fired from the licenced firearm of the first informant. The

learned counsel for the applicant refuted the said submission by submitting that first informant might have given some other revolver than the revolver which was used by him during the incident.

7. After giving anxious consideration, the submissions advanced and the manner in which and the purpose for which the acts were committed, and particularly the material in the statements of 8 eye witnesses makes it difficult to accept the submission that the bullet which had struck the injured was fired by the first informant and not by the applicant. It is difficult to discard the said material only on the basis of the victim having lodged complaint against the first informant for having fired shot at him. The reference to the said first informantion undoubtedly reveals that victim informant is the person from the group of the applicant.

8. The papers of investigation does not reveal that weapon which was used for firing bullet, even allegedly by the applicant is seized during the course of investigation. Having regard to it, it is difficult to accept that there is no need of custodial interrogation of the applicant for completion of investigation. Apart from it, the manner in which and the purpose for which the applicant is alleged to have committed such act clearly denotes that this can never said to be a fit case for grant of pre arrest bail. There are no merits in the application.

Resultantly, application stands dismissed.

(P.D. KODE, J.)