

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

**Criminal Application [ABA] No.182 of 2015**

(Anil Gajbhiye alias Liniya Bhimrao Gajbhiye

vs.

The State of Maharashtra, through P.S.O. Yavatmal [City])

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders

Ms. S.N. Maniyar, Advocate for the Applicant.

Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

**CORAM : PRASANNA B. VARALE, J.**

**DATE : APRIL 23, 2015.**

Heard Ms. Maniyar, the learned Counsel for the applicant.

The applicant is before this Court seeking protection in the nature of pre-arrest bail in connection with Crime No. 293/2014, registered at Police Station Yavatmal (City) for the offences punishable under Sections 302, 147, 148, 149, 120-B, 341 and 307 of the Indian Penal Code read with Sections 3,4 and 25 of the Arms Act and further read with Section 135 of the Bombay Police Act.

The learned Counsel for the applicant, by inviting my attention to the F.I.R. lodged at the instance of the informant-Smt. Jyoti Bansod, the wife of the victim-Ajay, submits that the report was lodged at the police station immediately after the incident. She submits that the

informant/complainant reached on the spot on receiving a phone call and found that her husband was subjected to assault and Ritesh, Raja, Vijay, Viraj, Nitin, Sachin and other two persons were actively involved in giving blows. Ritesh was armed with knife. Vijay and Raja were carrying pistol. It is stated that the husband of the informant was lying in pool of blood and when she made hue and cry, the accused persons fled away from the spot. The learned Counsel for the applicant submits that it is specifically stated in the report that the husband of the informant i.e. the victim left home in company of Babu Wasnik and Nitin Mungle on his two wheeler. She states that there is absolutely no observance either of the presence of the applicant or the role played by him in the report lodged at the instance of the informant-Jyoti. She further states that the only material against the applicant is in the form of a belated supplementary statement recorded of Jyoti. She states that introduction of the applicant at a belated stage itself creates suspicion and doubt over the story of the prosecution. She then submits that when the informant gives a detailed version of the other accused, who played role of attack with the weapons like knife, and the reference to the accused, who were armed with the weapon like pistol, it is unpalatable that the informant would have missed the presence of the applicant. The learned Counsel then submits that on account

of some rivalry, the applicant is implicated. The learned Counsel also submits that the applicant was protected by an interim order of this Court and he has complied with the directions of this Court and also extended his cooperation to the investigating agency. She further submits that the applicant is ready to abide by any condition imposed upon him.

Mr. Khan, the learned A.P.P. vehemently opposes the application. He submits that apart from the supplementary statement of the informant, there is other material in the form of the statement of one eye-witness viz. Mangala, who refers to the presence of the applicant and his role played. He further vehemently submits that as it was an unlawful assembly of the accused persons, who were carrying grudge against the victim, the applicant, who is also a participant of that unlawful assembly and armed with weapon sword, is not entitled for any protection.

The learned A.P.P. made available the documents and the material collected by the investigating agency. I have gone through the material. The report itself refers to a fact that the victim left his home in company of Babu Wasnik and Nitin Mungle. He was the pillion rider. On the backdrop of the fact that he was the pillion rider, the report then states that Babu made phone call to the informant and on receiving that

phone call, she reached the spot. On the backdrop of this fact, it will be necessary to consider the statement of these two witnesses. Nitin, whose statement is recorded on 22/05/2014, states that he along with Babu and Ajay reached a place called Mahatma Fule square at about 09:00 p.m. Nitin then refers to the presence of Ritesh, Nitin, Vijay, Raju, Virendra and Sachin. He stated that Raju and Vijay gave threats of life showing pistol, when he made an attempt to intervene. Then he states that he ran away from the spot and then again reached the spot with Jyoti. Then he reiterates the story as stated by Jyoti. The statement of Nitin is silent on the presence or role of the applicant. Babu, whose statement is recorded on 23/05/2014, also gives a similar version like Nitin. He also is silent on the presence and role of the applicant. As the learned A.P.P. relied on the statement of Smt. Manngala, on perusal of the statement of Mangala, it reveals that her statement is recorded on 08/08/2014 and in her statement, she refers to the presence of the applicant and states that he was armed with sword and he was giving threats. Thus, on perusal of this statement, what emerges is the silence on the aspect of presence and any role played by those witnesses, who were either along with the victim or reached immediately on the spot, and introduction of the presence and the role played by the applicant by these witnesses, whose statements are

recorded after three months.

On the backdrop of these facts, in my opinion, the learned Counsel for the applicant has made out a case for the protection, as claimed for. The apprehension of the State can be taken care of by imposing conditions on the applicant.

In the result, the application is allowed. The interim order passed by this Court on 09/04/2015 in favour of the applicant stands confirmed with a condition that the applicant to attend the Police Station Yavatmal (City) on every Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till filing of the charge-sheet.

The application is disposed of in above terms.

**JUDGE**

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