

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2455 OF 2018

Stephen Susainath Chelan ... Applicant

Vs.

The State of Maharashtra ... Respondent

WITH

CRIMINAL APPLICATION NO. 1479 OF 2018

IN

ANTICIPATORY BAIL APPLICATION NO. 2455 OF 2018

Rajesh Thavaru Chavan ... Intervenor

In the matter between

Stephen Susainath Chelan ... Applicant

Vs.

The State of Maharashtra ... Respondent

...

Shri Devendra D. Pawar I/by Shri Rajiv D. Suryawanshi for the applicant in A.B.A No.2455 of 2018.

Shri Suraj Naik for the intervenor in Cri. Application No. 1479 of 2018.

Shri M.G. Patil, APP for the State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th DECEMBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with C.R. No. I-92 of 2018 registered with Ambarnath Police Station for the offence punishable under Sections 395, 397, 427, 504, 506 of Indian Penal Code. The First Information Report was lodged on 19th April, 2018.

2. The applicant had preferred an application for anticipatory bail before the Court of Sessions which was rejected vide order dated 30th October, 2018.

3. The prosecution case is that the complainant Rajesh Thavaru Chavan lodged complaint with Ambarnath Police Station alleging that on 19th April, 2018 at about 2 O'Clock at Shashtrinagar, Near Platform No.1, in open place near the house of Smt. Ninnpunna Rangaswami, one Sharif Khan and Stephen and others were assaulting Sunil Yadav and Armugam Mudliyar. The complainant went to rescue and at that time son of late Krishnamurti assaulted complainant by beer bottle. Stephen assaulted by sword on complainant left hand. Sharif Shaikh assaulted third person by sword on his head. It is further Jaypal, Andraja and son of Krisnamurthy assaulted. It is further alleged that all the persons were frightened due to assault and they were trying to run away from the place of incident. At that time Sharif Shaikh snatched gold chain from the neck of Armugam Mudliyar. On hearing their shouts, the persons who were going to railway station came to their rescue. However, Sharif Shaikh and Stephen threatened them of dire consequences by wielding weapon. Accused ran towards persons who were coming for help of victim, by holding stone.

The victims were also threatened that if they would go to police station, they would be killed. However, victims managed to hide themselves in bushes and thereafter went to the police station and lodged the First Information Report.

3. During the course of investigation co-accused Rajesh @ Chapya Krishnmurthy Harijan, was arrested on 18th June, 2018 and since he was a juvenile. He was produced before the Juvenile Justice Board, Bhiwandi on 18th June, 2018. In the remand, the co-accused Rajesh mentioned the name of wanted accused as Stephen Ninnaraj Chalan. Therefore, according to applicant he apprehended his arrest as his name was mentioned first time in the remand application as stated above and hence he preferred an Anticipatory Bail Application No. 1000 of 2018 on 20th June, 2018 before the Sessions Court at Kalyan. In the said application, initially interim relief was granted by directing the applicant to attend the Investigating Officer as and when required. However, by order dated 18th July, 2018 the application was rejected. The applicant thereafter preferred another application before the Sessions Court which was also rejected. The second application was preferred in view of change of circumstances. The applicant had stated that the dispute between him and the first informant

was resolved and the first informant has categorically stated that the person named in the FIR is not concerned with the said offence. In the said application, first informant and two other injured witnesses represented through their advocate and filed affidavit stating therein that the applicant is not concerned with the crime. The second application was rejected on 13th October, 2018.

4. Learned counsel for the applicant contends that applicant is not concerned with the crime. He has been falsely implicated in this case. The applicant was externed from the said area at the relevant time and he has no reason to be present at the scene of offence. There are several persons in the name of Stephen in the said area and merely because the first informant had referred one of the assailant as Stephen, the applicant cannot be made responsible for commission of crime. It is submitted that the applicant was not present at the scene of offence at the relevant time and he was at another place. The applicant therefore raised plea of *alibi*. It is submitted that police did not make any inquiry in that regard. Sessions Court had directed to police to record the statement of the person who had filed affidavits. However, no action was initiated by police. The complainant preferred an

application for intervention stating that the complainant and other injured stated in affidavit that applicant is not the person who is alleged in present crime as Stephen and the applicant is known to them and he is not involved in this offence. It is therefore submitted that the custody of the applicant is not necessary. He is willing to co-operate with the investigation and hence, the applicant may be released on anticipatory bail.

5. Learned APP submitted that the witnesses in their statements recorded during the course of investigation have categorically referred the name of Stephen as a person who was armed with sword having assaulted the injured persons. The said witnesses in their consistent version had attributed overt act to the applicant who was referred to as a Stephen. It is submitted that the witnesses are now trying back out from the statement by stating that the persons who has referred to the Stephen is not applicant but somebody else. Learned APP further submitted that other witnesses have not indicated who is the other persons named as Stephen who is involved in the assaulting the injured persons. This shows that the stand of these witnesses is after thought and it is case of tampering evidence. It is further submitted that there are several antecedents against the applicant. Seven cases are

registered against the applicant with Ambarnath Police Station and Shastri Nagar Police Station. The report tendered by the learned APP refers to the details of the cases registered against the applicant. It is submitted that apart from the statement of aforesaid witnesses who had purportedly filed affidavits, the Investigation Officer has recorded the statement of other witnesses during the course of investigation and the statement of the said witnesses has also referred the presence of the applicant as one of the assailant who participated in assault. It is further submitted that the version of the witnesses who have filed this intervention application and the affidavits cannot be accepted at this stage. The plea of *alibi* raised can be adjudicated at the time of trial, this is not the stage to appreciate the ground of *alibi*.

6. On perusal of material produced by the learned APP, it is apparent that apart from the witnesses who have filed the affidavits the Investigating Officer has recorded the statement of two persons who are eye witnesses to the incident having attributed specific overt act to the applicant as one of the assailant who had assaulted the injured by using of sword. It is also pointed out that one of the accused Sharif Shaikh was arrested and his statement was recorded on 23rd September, 2018. During the

course of interrogation of Sharif Shaikh, he has stated the presence of the applicant in the said crime. It is also required to be noted that there are several cases registered against the applicant. The applicant had preferred two applications for anticipatory bail before the Sessions court which were rejected. The grounds of *alibi* raised in this application and the intervention application are subject matter of trial and the same cannot be appreciated at this stage. In the circumstances, the case for grant of anticipatory bail is not made out. Hence, the anticipatory bail application No. 2455 of 2018 is rejected. The Criminal Application No. 1479 of 2018 is also stands disposed off.

(PRAKASH D. NAIK, J.)