

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

ANTICIPATORY BAIL APPLICATION NO.972 OF 2019

Sachin Shanmukh Paste

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Satyavrat Joshi I/b. Nitesh J. Mohite, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. Vasant Babar, PI, Laxmipuri Police Station, Kolhapur present.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.63/2019 registered at Laxmipuri Police Station, Kolhapur under sections 307, 143, 147, 148, 149, 336, 504, 506, 427 of IPC and under section 4 and 25 of the Indian Arms Act.

2. The FIR is lodged by one Manorama Misal on

1/3/2019. She has stated in her FIR that her brother-in-law was murdered in the year 2010. Accused Amin Shaikh, Sandeep Patil and Nadeep Naikwadi were accused in that case. Amin and Sandeep were convicted in that case. Third accused Nadeem was acquitted in the Trial Court. In the Appeal before High Court Amin and Sandeep both were acquitted. They were released from jail. On 28/2/2019, at about 7.30 p.m., these three accused alongwith six others including the present applicant came to the locality of the first informant with weapons like sticks, swords, axe and stones. They burst fire crackers in the area. The residents and others from the locality were terrorized. These accused went towards the house of the first informant. There was a poster of the deceased Mangesh Misal i.e. brother-in-law of the informant which was torn by the accused. Rakesh Sadashiv Koli and Rishikesh Jayram Khodal were sitting in front of house of the first informant. Accused Rafiq assaulted Rakesh on his head with the sword. Accused Digambar Patil assaulted Rishikesh on his head with the sword. After that those two accused ran away from the spot. Thereafter, accused while going away damaged a car by pelting

stones on it. After some time, the police officers came and accused ran away from the spot. The injured were admitted to the hospital and the FIR was lodged.

3. Heard Mr. Satyavrat Joshi, Ld. Counsel for the Applicant, Smt. Takalkar, Ld. APP for the State.

4. Mr. Joshi submitted that looking at the past history of dispute between the parties, there is a strong possibility that the present applicant is implicated falsely. He submitted that no specific role or weapon is attributed to the present applicant. He further submitted that one of the co-accused Digambar Patil is granted anticipatory bail by the Sessions Court, Kolhapur. Therefore, this applicant also deserves to be released on anticipatory bail on the ground of parity. He submitted that the applicant does not have any criminal antecedents.

5. As against this submission, Ld. APP pointed out the investigation carried out so far. The investigation papers include

statement of injured eye witnesses i.e. Rakesh Koli and Rishikesh Khodal. Their statements are consistent with the FIR. There are three other eye witnesses who have also stated the same story. All these witnesses have named the applicant as one of the members of the unlawful assembly. The injury certificate shows that the injured eye witnesses have suffered injuries corresponding to the narration. However, those injuries are described as simple injuries. There is also spot panchanama in the papers produced before me. The spot panchanama also supports the case of the prosecution.

6. I have considered the submissions made before me. I have perused the order passed by the In-charge Additional Sessions Judge, Kolhapur on 23/5/2019 passed in Criminal Bail Application No.487/2019 granting anticipatory bail to one of the co-accused Digambar Patil. I am unable to agree with the observations made in that order. It is observed in that order that there was no recovery at the instance of that co-accused. That accused Digambar Patil was never arrested because his

anticipatory bail application was being decided by the Ld. Judge. Therefore, there was no question of the recovery at his instance at that point of time. In the FIR, there is a specific role attributed to this Digamber Patil. Even that aspect is not properly considered by the Ld. Judge. Therefore, I am not inclined to consider this factor of grant anticipatory bail to the co-accused Digamber Patil for deciding the present application of the present applicant for anticipatory bail. Though the injuries suffered by the injured eye witnesses are simple, they were assaulted on vital parts like their head with deadly weapons like sword. Therefore, it cannot be said that section 307 is wrongly applied at this stage. The manner in which the offence was committed and the manner in which all the accused had formed unlawful assembly and had terrorized the people in the locality; has also to be taken into consideration. Therefore, I am not inclined to grant protection to the applicant. The application is therefore rejected.

(SARANG V. KOTWAL, J.)