

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 747 of 2020

Keshav @ Bandu s/o Shridhar Mundhe,
Age : 35 years, Occu. Agri.,
R/o Kodri, Tal. Gangakhed,
District Parbhani

APPLICANT

VERSUS

The State of Maharashtra,
through Police Inspector,
Police Station, Gangakhed,
Tal. Gangakhed, Dist. Parbhani

RESPONDENT

Mr. M.S. Karad, Advocate for the applicant
Mrs. P.V. Diggikar, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 03.11.2020

PER COURT :

Heard both the sides.

2. This is an application under Section 438 of the Code of Criminal Procedure by one of the accused from Crime No. 303/2020, registered with Police Station, Gangakhed for the offences punishable under Sections 307, 341, 143, 147, 148, 149, 323, 504 and 506 of the

Indian Penal Code.

3. Shortly stated, the allegations as can be made out from the FIR and the police papers, are to the effect that the co-accused Rajabhau is the son-in-law of the informant. There was matrimonial dispute between Rajabhau and his wife. She had implicated him in a crime under Sections 498-A, 313, etc. of the IPC and he had secured bail. It is alleged that on account of such enmity, on 28.06.2020, between 2.00 p.m. and 2.30 p.m., the applicant was accompanying Rajabhau and his brother Karan and all of them assaulted the informant with intention to kill him.

4. Mr. M.S. Karad, learned Advocate for the applicant submits that though the name of the applicant appears in the FIR and some overt-act is attributed to him, he stands on the same footing as that of co-accused Arjun and Hanmant. The allegations in the FIR show that all the three had assaulted the informant with kick and fist blows. The learned Additional Sessions Judge has granted anticipatory bail to Arjun and Hanmant, but has not granted bail to the applicant.

5. The learned Advocate further submits that subsequently, the matter has been compromised out of the Court between the informant and the accused persons and therefore, this would be an added ground for granting anticipatory bail to the applicant from whom nothing is to be recovered. There are no criminal antecedents and the application may be

allowed.

6. The learned A.P.P. strongly opposes the application. She submits that the factum of compromise out of the Court should not weigh with the Court while considering the application for anticipatory bail. The offence is serious and punishable with life imprisonment. It is a matter of formation of an unlawful assembly. Each of the member is equally liable for all the consequences irrespective of the overt-act attributable to him. The investigation is still to be completed and releasing the applicant on anticipatory bail is likely to cause prejudice to the Investigating Officer and the application may be rejected.

7. I have carefully considered the papers. Suffice to observe that the question of compromise should not enter into any discussion while considering the request for anticipatory bail under Section 438 of the Code of Criminal Procedure. Therefore, the applicant is not entitled to resort to such a plea.

8. However, conspicuously, the co-accused Arjun and Hanmant have been granted anticipatory bail by the learned Additional Sessions Judge. The FIR apparently treats all the three i.e. Arjun, Hanmant and the applicant equally. It has been vaguely alleged therein that all the three had assaulted the informant with kicks. If this is the state-of-affairs, it was expected of the learned Additional Sessions Judge to have mentioned in the order refusing

the bail to the applicant as to why and how his case stands on a different footing. Perhaps, the learned Additional Sessions Judge first rejected the application of the present applicant and thereafter, granted anticipatory bail to Arjun and Hanmant. Whatever may be the reason, when Arjun and Hanmant have been granted anticipatory bail, even the applicant is entitled to claim the same relief on the ground of parity, more so when nothing is to be recovered from him or discovered by him. The prime accused are Karan and Rajabhau. Rajabhau has been granted regular bail and the application for anticipatory bail by Karan has been rejected today by this Court.

9. Be that as it may, the applicant is entitled to anticipatory bail on the ground of parity.

10. The application is allowed. In the event of arrest of the applicant in connection with Crime No.303/2020 registered with Police Station, Gangakhed for the offences punishable under Sections 307, 341, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code, he shall be released on bail on his executing personal recognizance for an amount of Rs.25,000/- (Rupees Twenty Five Thousand) and furnishing a solvent surety in the like amount on following conditions :

a] He shall attend the concerned Police Station as and when called by the Investigating Officer till filing of the chargesheet and shall cooperate him.

b] He shall not tamper the evidence or influence the witnesses.

[MANGESH S. PATIL]
JUDGE

npj/ABA747-2020