

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1027 OF 2020

Ankush Mansing Pawar,
Age 56 yrs., Occ. Agri.,
R/o Mansing Complex,
Shastri Chowk, College Road,
Georai, Tq. Gevrai, Dist. Beed.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
 Through the In charge
 Police Station Officer,
 Talwada Police Station,
 Tq. Georai, Dist. Beed.

- 2 The Superintendent of Police,
 Beed.

... Respondents

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for
applicant

Mr. A.M. Phule, APP for respondents

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1037 OF 2020

Digambar Ankush Pawar,
Age 40 yrs., Occ. Agri.,
R/o Georai, Tq. Gevrai,
Dist. Beed.

... Applicant

... **Versus** ...

The State of Maharashtra
Through Talwada Police Station,
Tq. Georai, Dist. Beed.

... **Respondent**

...

Mr. N.R. Thorat, Advocate for applicant

Mr. A.M. Phule, APP for respondents

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th DECEMBER, 2020.

ORDER :

1 Both these applications have been filed for getting anticipatory bail as both the applicants are apprehending their arrest in connection with Crime No.165/2020 dated 12.07.2020 registered with Talwada Police Station, Tq. Georai, Dist. Beed for the offence punishable under Section 307, 341, 327, 143, 147, 148, 149 of the Indian Penal Code and under Section 4 and 25 of the Arms Act.

2 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by Mr. D.R. Deshmukh for applicant in Anticipatory Bail Application No.1027 of 2020, learned Advocate Mr. N.R. Thorat for applicant in Anticipatory Bail Application No.1037 of 2020 and learned APP Mr. A.M. Phule for State in

both applications.

3 It has been vehemently submitted on behalf of the applicant by learned Senior Counsel that perusal of the First Information Report would show the name of one Ranjit Ankush Pawar, who is the son of applicant in A.B.A. No.1027 of 2020. However, it is stated that he was along with four unknown persons. There is ample evidence to show that the informant was knowing the present applicant even since prior to the date of incident. If he was already knowing the present applicant then why he should mention them as unknown persons. This shows the false implication of the present applicant. In fact, co-accused Ranjit was arrested and he has been released on regular bail. It is the case of the prosecution that during the course of interrogation co-accused has revealed the name of the present applicant. Such disclosure by co-accused is inadmissible in evidence. Further, it has also come before the learned Additional Sessions Judge that though the informant contended that he was assaulted by sword by co-accused and others had assaulted him by scythe and hammer, yet, what has been discovered is wooden log and iron rod (लोखंडी खिळ). Further, the scythe blows appears to be given on legs, and therefore, it cannot be stated that anybody had any intention to kill the informant. The physical custody of the present applicant is absolutely not required. He, therefore, prayed for anticipatory bail.

4 Learned Advocate Mr. N.R. Thorat representing another applicant adopted the arguments by the learned Senior Counsel and submitted that even the physical custody of that applicant is not required for investigation.

5 Learned APP strongly opposed the applications. Though he has submitted that now the subsequent event, that is taken place is, the informant has expired on 31.07.2020, however, it is due to COVID. Though the informant had stated that name of one Ranjit Ankush Pawar and added four unknown persons; yet, there is eye witness to the incident by name Rajaram Wawre and his statement has been recorded on 20.08.2020 and his statement under Section 164 of Cr.P.C. has been recorded on 31.08.2020. In both these statements he has stated that the present applicant Ankush was assaulting the informant by hammer and applicant Digambar was assaulting with the help of round steel shock-up. Therefore, though the informant has now expired, yet, the prosecution case would stand with the statement of the eye witness. The weapon used in commission of crime is definitely required to be seized at their instance, and therefore, their custody is required.

6 It is necessary to take into account as to what the informant had informed in his FIR. As usual on 11.07.2020 the informant was going to his field on his motorcycle. At about 10.00 to 10.30 a.m. when he came near the

canal road, co-accused Ranjit Ankush Pawar and four unknown persons restrained him. Ranjit Pawar was holding sword and brother-in-law of Ranjit and other persons were holding scythe. They all five persons started assaulting the complainant. Ranjit Pawar has given blow of sword on his both legs and right hand. Brother-in-law of Ranjit and other persons assaulted him on his leg, right shoulder and left hand by scythe and hammer. They pushed the informant in the canal and fled away with his motorcycle and cell phone. As the informant could not move due to grievous injuries he was lying in the canal. After half an hour adjacent land holders of informant viz. Vitthal Domale and Akbar Shaikh came there and brought up him from the canal and shifted to Government Hospital, Georai. Thereafter, he was shifted to Lifeline Hospital, Beed for further treatment and thereafter to Carewell Hospital, Aurangabad.

7 Thus, taking note of it, it can be seen that he had given name of only Ranjit. The documents produced on record by applicant Ankush would reveal that informant might have been knowing both the applicants since prior to the incident. Even on the basis of his application, chapter case was instituted in the month of October, 2018. Therefore, when he was knowing these two applicants, there was no reason for him to not the name them in the FIR. It is interesting to note, the say, that is given by the Investigating

Officer, which is forming part of the police paper, that there is every possibility that the informant was knowing the present applicants, as their agricultural lands are adjacent to each other. But then the Investigating Officer has blamed Ranjit for not providing proper information to the Investigating Officer. This cannot be the fact when incident is stated to have taken place on 11.07.2020 and Ranjit was arrested on 21.07.2020, then it is the investigation which is lacking in taking prompt action. Now, the prosecution wants to rely on the statement of eye witness but his statement is taken on 20.08.2020, which is definitely belated. Now, the informant is also not available. He expired on 31.07.2020. That means, the statement of eye witness has been recorded after the death of informant. They have taken into consideration all these aspects. When already an opportunity was given to the Investigating Officer, when he had arrested Ranjit, made discovery of certain weapons and some different weapons that mentioned in the FIR have been discovered, it cannot be now stated that on the basis of statement of the eye witness the recovery of those weapons, which were mentioned in the FIR, are required to be discovered. Under such circumstance, the applications deserved to be allowed.

ORDER

1 Both the applications stand allowed.

2 The orders passed by learned Additional Sessions Judge, Beed in Miscellaneous Criminal Application No.610/2020 and Miscellaneous Criminal Application No.611/2020 dated 14.10.2020, are hereby set aside. Said applications stand allowed.

3 The ad-interim protection, granted by this Court earlier to applicant Ankush Mansing Pawar vide order dated 05.11.2020 and to applicant Digambar Ankush Pawar vide order dated 06.11.2020, is hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of both the applicants, in connection with Crime No.165/2020 registered with Talwada Police Station, Tq. Georai, Dist. Beed for the offence punishable under Section 307, 341, 327, 143, 147, 148, 149 of the Indian Penal Code and under Section 4 and 25 of the Arms Act, they be released on P.R. of Rs.20,000/- each and solvent surety in the like amount each.

4 Applicants shall not tamper with the evidence of prosecution, in any manner and shall cooperate with the investigation.

5 They shall attend the Talwada Police Station as and when called by the Investigating Officer.

(Smt. Vibha Kankanwadi, J.)