

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 ANTICIPATORY BAIL APPLICATION NO.1072 OF 2020

BALU @ DHAMMASAGAR HIRALAL SAMUDRA

VERSUS

STATE OF MAHARASHTRA

...

Mr. R.R. Karpe, Advocate for applicant

Mr. A.M. Phule, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17th DECEMBER, 2020

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.465/2020 registered with Jamkhed Police Station, Tq. Jamkhed, Dist. Ahmednagar for the offence punishable under Section 395, 363, 341 of the Indian penal Code, and therefore, he has filed present application for grant of anticipatory bail.

2 Heard learned Advocate Mr. R.R. Karpe for applicant and learned APP Mr. A.M. Phule for respondent.

3 It has been vehemently submitted on behalf of the applicant that

the perusal of First Information Report lodged by one Samsan Narsimalu Koninatti would show that he is resident of Talangana State and he is a driver by profession. He works on Eicher truck owned by one Mohd. Khwaja. He was transporting articles in gunny bags on 05.09.2020 from Gummaddidala (M), Dist. Sangareddi. At about 5.00 a.m. on 06.09.2020 he was proceeding from Tuljapur, Bhoom to Ahmednagar. At about 11.00 to 11.30 a.m. when he was near Shiur Fata, his vehicle was stopped by one black colour scorio vehicle, which was not having any number plate. About 7-8 persons got down from scorio vehicle with wooden sticks and iron rod. Further, 5-6 motorcycles came from behind on which 10-12 persons were travelling. All of them dragged him from truck and started him assaulting. One person was addressed as Balu by others, that Balu had assaulted him and snatched his mobile and cash from his pocket. He was then forcibly made to sit in the truck. One of them started driving the truck and the truck was put in reverse direction and after taking it to a lonely place the vehicle was stopped. They all started inspecting the gunny bags, however, at that place two police vehicles came and after witnessing it all those persons tried to flee away. Police managed to arrest four persons. They were Rohan Vishnu Kale, Pinu Rajendra Jawale, Mahesh Kailas Gavhale and Dattatraya Bhimrao Shinde. Police made inquiry in respect of others and at that time, it is stated, that those persons disclosed the name of the present applicant. The informant

says that from the information given by those accused persons it was revealed that the said scorpio vehicle was belonging to the present applicant. Thereafter, the informant lodged the report.

4 The learned Advocate for the applicant further submitted that the disclosure of the name of the present applicant is on the basis of statement given by co-accused which is inadmissible, it cannot be stated that he had participated in the commission of the crime. Taking into consideration the facts of the case, the accused Nos.6 and 9 have been granted pre-arrest bail by learned Additional Sessions Judge, whereas accused Nos.1 to 4, 7 and 8 have been granted regular bail. The custodial interrogation of the present applicant is unwarranted. The FIR shows about unimaginable story, that even the police had reached the said spot, which is said to be an isolated place. Merely because a vehicle has been used in commission of the crime and that is required to be seized cannot be the sole ground, on which the applicant's request of pre-arrest bail can be rejected. Reliance has been placed by the learned Advocate for the applicant on the decision in **State of U.P. vs. Deoman Upadhyaya, AIR 1960 SC 1125**. Further, the criminal antecedents cannot be also a sole ground for rejection of application for pre-arrest bail as it is held by this Court in **Sajid Basir Shaikh vs. State of Maharashtra, 2005(3) Mh.L.J. 860**.

4.1 He further relied on the decision in **Prabhakar Tewari vs. State of Uttar Pradesh and another, (2020) 1 Crimes 153**, wherein it is held that, *even if an offence is grave and serious and there are several criminal cases pending against the accused these factors by themselves cannot be the basis for refusal of prayer for bail.*

4.2 Further, reliance has been placed on the decision in **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, (2011) 1 SCC 694**, wherein it is observed that, *person seeking anticipatory bail is still a free man entitled to presumption of innocence. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. The grant or refusal should then depend upon the facts and circumstances of each case.*

He submits that the facts and circumstances of the case and the investigation has progressed uptill now does not warrant physical custody of the present applicant, and therefore, he is entitled to be released on anticipatory bail.

5 Per contra, the learned APP strongly opposed the application stating that in the FIR itself the informant has stated that all others were addressing the present applicant as Balu. His name is Balu and then the connecting fact is, that when the co-accused i.e. accused Nos.1 to 4 were

taken in custody by the police on the spot and the inquiry at that place itself had revealed the name of the present applicant, then the connection of the present applicant with the crime alleged can be seen. Further, it is the applicant who had snatched the mobile handset of the informant and cash of Rs.3,000/-. That amount and the article is yet to be recovered. The entire truck containing 268 gunny bags of powder activated carbon worth Rs.13,68,540/- were taken from one place to another against the wish of the present applicant by the accused persons forcibly and by assaulting him. When more than 20 persons had come, who are stated to be armed with wooden sticks and iron rods, what has been recovered is only two sticks. Therefore, when serious offence has been committed, certain accused are still absconding, investigation is still pending. The scorpio vehicle and other motorcycles involved in the case are yet to be recovered. Weapons are yet to be recovered, then the custody of the present applicant is definitely required. It is further submitted that the present applicant is also involved in Crime No.20/2020 dated 06.03.2020 for the offence punishable under Section 307, 353, 363, 323, 504, 506, 379, 427 read with Section 34 of the Indian Penal Code. In that case also he was absconding for about five months, then this Court has granted him anticipatory bail. Therefore, possibility of he getting absconding once again cannot be ruled out.

6 At the outset, it is required to be said that the informant is from different State, and therefore, he is not knowing any of the accused persons. Therefore false implication is out of question. Further, the incident has taken place in day time. Therefore, he had every opportunity to see each and every person. As regards present informant is concerned, in his FIR, he has specifically stated that the other persons were calling one person as Balu and then said Balu had snatched the mobile and cash from his person. That means a specific role has been attributed to the present applicant. How the police went to the spot can be seen from the statement of PSI Nilesh Kamble. He has stated that when they were on the search of absconding accused within the jurisdiction of Jamkhed Police Station, they received information that one Eicher truck and black scorpio vehicle as well as certain motorcycles have been gone on a kachcha road beyond Rawan Vasti within Ghodegaon Shivar. Therefore, police went to the said place and after they were spotted, the accused persons started running. Four of those persons were caught and from inquiry with them they could get the name of the present applicant. Now, whether the said statement by those persons, who are taken in custody disclosing name of the applicant, would be admissible or not, would be seen at the time of trial. However, a fact needs to be distinguished that when those persons were caught they were not arrested the present accused at that moment. The FIR was lodged after they all along with informant were

brought to Police Station. Therefore, this distinction or this fact would be definitely borne by the trial Court.

7 The ratio laid down in all the citations relied by the learned Advocate for the applicant cannot be disputed. However, it is to be noted that in **Sajid Shaikh's** case (supra) the question that was raised was, when the co-accused was released on compulsory bail under Section 167(2) of the Code of Criminal Procedure, 1973, then whether co-accused can be released under Section 439 of Cr.P.C. No doubt, apart from that point it is observed by this Court as well as it is the ratio in **Prabhakar Tewari's** case (supra) also that the seriousness of the offence and criminal antecedents cannot be the only criterion to reject anticipatory bail. Here, the recovery is also contemplated apart from the other factors noted above. Independent consideration of the reasons cannot be the sole criterion, when it comes with other criteria also then definitely the discretionary relief of anticipatory bail which has to be used sparingly, will have to be used judiciously. The observations in **Deoman Upadhyaya's** case (supra) would show that it was under the old Cr.P.C. i.e. of prior to Cr.P.C. of 1973, and therefore, the procedure was different. The questions before the Full Bench those were referred by the Division Bench were - 1) Whether Section 27 of the Indian Evidence Act is void because it offends against the provisions of Article 14 of the Constitution ? and 2)

Whether sub Section (2) of Section 162 of the Code of Criminal Procedure in so far as it relates to Section 27 of the Indian Evidence Act is void ?

Taking into consideration the evidence that was led before Chief Judicial Magistrate it was answered that Section 27 of the Indian Evidence Act and Section 162(2) of Cr.P.C. in so far as “that Section relates to Section 27 of Indian Evidence Act”, are intra vires and do not offend Article 14 of Constitution. In fact, in that case it was after the entire evidence was over and order of High Court acquitting the respondent i.e. Deoman was set aside and the order of Court of Sessions convicting him under Section 302 of the Indian Penal Code and sentencing him to death was restored. We are at very initial stage. Further, the ratio in **Siddharam Mhetre’s** case (supra) is definitely required to be considered here. After considering those principles when the facts are clear involvement of the applicant has been shown, he does not deserve to be released on anticipatory bail. Hence, application stands rejected.

(**Smt. Vibha Kankanwadi, J.)**