

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.686 OF 2020

(Gajanan s/o Kishore Patankar Vs. The State of Maharashtra thr. PSO PS Deoli, Dist.
Wardha)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Uday Dable, Advocate for Applicant.
Mr. V.A. Thakare, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 21st DECEMBER, 2020.

Heard.

2. The applicant is apprehending arrest in Crime 627/2020 registered with Police Station Deoli, District Wardha for offences punishable under sections 353, 143, 147, 149 and 332 of the Indian Penal Code.

3. The crime is registered on the basis of report dated 01.10.2020 lodged by Police Constable Nitin Bhoyar.

4. The applicant Gajanan Patankar is facing as many as twenty-three prosecutions and most of them are prosecutions under the Maharashtra Prohibition Act, 1949.

5. The applicant was a suspect in an offence punishable under the said enactment and the police were on the lookout since he allegedly fled from the scene of

crime at the time of raid. At mid-night on 30.09.2020 the informant Nitin Bhoyar and his colleague constable came to know that the applicant and his associates were at the *Dhabha* near the Kapse Petrol Pump. The informant informed the other staff and reached the said place. When the informant attempted to apprehend the applicant, the applicant caught hold of the informant's collar and pushed him and the accompanying associates launched an assault with fists and blows. Applicant was threatening the informant Nitin Bhoyar with murder and exhorted co-accused Vicky to fetch a sword. Vicky accordingly fetch a sword from the vehicle. However, since the police jeep arrived at the spot, the accused fled.

6. The medical papers *prima facie* corroborate the version of assault.

7. The perusal of the case diary reveals that eye witnesses have consistently supported the version of the informant.

8. There is more than ample material on record to connect the applicant with the crime.

9. Mr. Uday Dable submits that even if the report is accepted at face value, there is no allegation that the applicant has assaulted the informant. The submission is noted only for rejection, since the same is made ignoring

the definition of assault in section 351 of the IPC.

10. The next submission is that the informant could not possibly be discharging duty at mid-night. Again, the submission is made ignoring the nature of the duties which a police man is required to discharge. It is common sense that the police man is deemed to be on duty 24 hours x 7 days and I do not know of any provision or precedent which says that a police man cannot be on the lookout of an offender at mid-night or that he cannot not apprehend an offender at mid-night.

11. The final submission is that custodial interrogation is not necessary. In my considered view, even if it is to be assumed, *arguendo*, that custodial interrogation is not necessary, it is not an inexorable rule known to criminal jurisprudence that a person becomes entitled to pre-arrest protection *ipso facto*. Discretion of the Court cannot be fettered by a self-imposed and mistaken assumption that the custodial interrogation is not necessary pre-arrest protection must inevitably follow. The applicant appears to be a serial offender. The policy of the State, framed to give effect to a constitutional obligation, to prohibit liquor in certain districts is being frustrated by organized crime syndicates (the term is not used in the sense implied by the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) operating in prohibited areas. The applicant, *prima facie*, appears to be an extremely active and known

perpetrators of such crimes. I would be loath to exercise discretion in favour of the applicant.

12. The application is dismissed.

13. Although not strictly required, at the insistence of the learned counsel Mr. Uday Dable, it is clarified that every observation here in reflects only a *prima facie* consideration made for the limited purpose of opposing pre-arrest protection and shall not influence the Court while considering application for grant of regular bail.

JUDGE