

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

16 ANTICIPATORY BAIL APPLICATION NO.859 OF 2021

- 1) Sagar s/o Ashok Jate,
Age 30 years, Occ. Agri,
R/o. Manjari Tq. Rahuri,
Dist. Ahmednagar.
- 2) Sarjerao s/o Shankar Jate,
Age 32 years, Occ. Agri,
R/o. Manjari Tq. Rahuri,
Dist. Ahmednagar.
- 3) Vasant s/o Tabaji Jate,
Age 31 years, Occ. Agri,
R/o. Manjari Tq. Rahuri,
Dist. Ahmednagar.
- 4) Raosaheb s/o Namdeo Bhagat,
Age 31 years, Occ. Agri,
R/o. Manjari Tq. Rahuri,
Dist. Ahmednagar.
- 5) Shailesh @ Shailem s/o Popatrao Vitnor,
Age 22 years, Occ. Agri,
R/o. Manjari Tq. Rahuri,
Dist. Ahmednagar.

...Applicants.

VERSUS

The State of Maharashtra and another

...Respondent

...

Mr. Nilesh S.Ghanekar, Counsel for the applicants
Mr. A.V.Deshmukh, APP for the respondent-State

...

CORAM : PRAKASH D. NAIK, J.

DATE : 11th OCTOBER, 2021

PER COURT :

1] This is a second application for anticipatory bail. Before this Court, the previous anticipatory bail application was rejected vide order dated 16th July, 2021 (by Justice S.K.Shinde). Normally, this application would

have been placed before the same Court. However, Justice S.K.Shinde is not available at this Bench. Hence, the application is heard by this Court.

2] Learned counsel for the applicants submitted that only ground on which the previous application of the applicants was rejected by this Court is that there was no compliance of direction of reporting the Investigating Officer. All other observations in the said order supported the contention of the applicants. In paragraph 4 of the said order, it was observed that the injured Shahaji was admitted in Kalamkar Hospital, Ahmednagar and he was conscious and well oriented. Therefore, the prosecution ought to have explained for not recording the statement of Shahaji in reasonable time and why it was recorded after six (6) days. Learned APP had shown the certificate issued by Om Multi Specialty Hospital, which shows that he was unconscious. Thus, there are two medical certificates. One showing that Shahaji was conscious and well oriented and the other shows that he was unconscious. Normally, in this situation benefit is to be extended to accused to hold that Shahaji was conscious. The case diary was produced by learned APP, which shows that the applicants had marked their presence in the Police Station but they did not report to the Investigating Officer. They were granted pre-arrest protection on condition that they would report to the Investigating Officer to facilitate to him to hold the investigation. They committed the breach of the conditions.

3] Learned counsel for the applicants, however, relied upon the photo copies of the diary maintained by applicants and submitted that the said document show that the applicants had not only reported to the police station but also reported to Investigating Officer. There are acknowledgments of the concerned Officer. Thus, the previous order was passed considering the fact that the applicants have only attended Police Station and did not appear before the Investigating Officer. The observation was made on the basis of station diary entry.

4] Learned APP submitted that the prosecution filed affidavit and in the said affidavit, it is mentioned that the applicants have attended the Police Station and on few occasions, they have attended the Investigating Officer.

5] I have perused the affidavit filed by the Investigating Officer. Paragraph Nos.6 to 8 of the said affidavit provide details of the attendance of the applicants before the Investigating Officer as well as of the Police Station. I have also perused the previous order passed by this Court, wherein, the observations above-stated are recorded. It is pertinent to note that the applicants were not named in the FIR. They were implicated subsequently and primarily on the statement of Shahaji, which was recorded after a period of six days from the date of the incident, which was considered by this Court in the previous order.

6] In these circumstances, the applicants can be granted anticipatory bail. Hence, I pass following order.

ORDER

- (i) Anticipatory Bail Application No.859 of 2021 is allowed.
- (ii) In the event of arrest of applicants in CR No.I-061 of 2021 registered with Rahuri Police Station, Rahuri Tq. Rahuri, Dist. Ahmednagar, the applicants be released on bail on their executing PR bond in the sum of Rs.20,000/- each with one or more sureties in the like amount.
- (iii) The applicants shall appear before Investigating Officer, as and when called for.
- (iv) The Application stands disposed of.

(PRAKASH D. NAIK, J.)

sarowar