

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

903 ANTICIPATORY BAIL APPLICATION NO.1047 OF 2021

Ejaz s/o Feroz Tadvil Pathan,
Age 27 years, Occ. Nil,
R/o. Row House No.9, Sadat Nagar,
Railway Station, Aurangabad

...Applicant.

VERSUS

The State of Maharashtra and others

...Respondents.

...

Mr. Cedric D.Fernandes, Counsel for the applicant
M. S.B.Narwade, APP for the respondents-State

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CORAM : PRAKASH D. NAIK, J.

DATE : 13th OCTOBER, 2021

PER COURT:

1] This is an application for pre-arrest bail in CR No.349 of 2020 registered with Satara Police Station, Aurangabad for offences punishable under Sections 307, 364(A) and 120-B of Indian Penal Code (for short, 'IPC'). The First Information Report (for short, 'FIR') was registered on 4th November, 2020.

2] The case of the prosecution is that the complainant received call stating that four persons had arrived in vehicle and one of them was armed with Pistol. Pistol was pointed out at Nadeem. After sometime, complainant also received call from Nadeem. He told him that son of Feroz Khan and his three associates came in the car and one of them showed Pistol to him. Nadeem was found injured. When the

complainant approached him, he disclosed the entire incident to him. He stated that revolver was pointed out at his head by the accused and during the scuffle, the bullet hit his thigh. He was abducted in the Car. On the way, he was assaulted by iron rod. The accused also demanded money from him. Car developed snag and stopped. The accused abandoned victim and left the place. He was taken to the hospital for treatment. Subsequently, his statement was recorded.

3] Some of the accused were arrested during the course of investigation. The applicant had preferred application for anticipatory bail before the Court of Sessions. The application was rejected.

4] Learned Counsel appearing for the applicant submitted that on account of the enmity between two families, the applicant is falsely implicated in this case. The applicant has not participated in the crime. He was not present at the place of the incident. The case is concocted by the complainant. The statement of the injured was recorded belatedly. Although, he was in a position to make the statement, he hesitated to give his statement to the police. This fact is revealed from the Station Diary Entry recorded by the police. The doctors had opined that he is fit to give a statement and inspite of that the statement was not given immediately. The statement of the injured was recorded after delay. The applicant has not been named in the FIR. He is being tried

to be arrested on the basis of suspicion and inferences. The evidence on record, does not corroborate the fact that the applicant was in company with the co-accused who had allegedly abducted, and assaulted the injured Nadeem. Nothing is to be recovered from the applicant. The prosecution is primarily relying upon the fact that the applicant is one of the conspirator in commission of the crime. The applicant had allegedly connived with the co-accused. Even the statement of the co-accused made during the course of the investigation does not indicate that applicant was present at the scene of the offence and participated in assaulting injured Nadeem. The co-accused were arrested and granted regular bail by the concerned Court. The offence under Sections 307 and 364(A) is not attracted. The presence of the applicant at the scene of offence has not been established. There is nothing to show that the applicant was the assailant. The informant or the injured was not sure about the names of the persons, who had abducted and assaulted him. Except stating that son of Feroz Khan and his associates are involved in commission of the crime, there was no specific statement relating to involvement of the applicant. The prosecution is relying upon the statement of Harshal Kale, which does infer that the applicant was conspirator. There are no criminal antecedents against the applicant.

5] Learned APP submitted that there was a incident in the past, wherein, the accused were involved in assault. The complaint was lodged by the father of the complainant in relation to the previous incident. All the accused were involved in commission of the offence. There was an attempt to commit murder of the injured person. In the scuffle, the injured sustained injuries to his thigh. There is recovery of the weapon from the co-accused. The applicant is the brother of the co-accused, who has been arrested. The applicant's participation is apparent from the statement of Harshal Kale. The accused had hired car, which was used in commission of offence from Harshal Kale. The payment of hire charges were made by the applicant and the co-accused. The conversation between Harshal Kale and the accused would indicate that the applicant was aware about the plan of the co-accused to commit the offence and thus, there is a evidence against the applicant being conspirator to commit the offence. The identification parade was conducted and the injured Nadeem has identified the arrested accused. The revolver was recovered under Section 27 of the Evidence Act from the co-accused. The incident is of serious nature. The applicant and the co-accused had motive to commit crime. The prosecution rely upon the evidence of CDR. The statement of Nadeem has been recorded under Section 164 of Cr.PC. Nadeem Pathan is injured person. The applicant was not available for a long period of

time. His application was rejected by the Sessions Court and belatedly this application has been preferred before this Court. Hence, application for anticipatory bail may be rejected.

6] The prosecution case is that on 4th November, 2020, Nadeem was allegedly abducted and assaulted. He had sustained bullet injury to thigh. The question which arises for consideration is whether the applicant is involved in the incident. On perusal of the investigation papers, it is apparent that the prosecution case proceeds on the basis that the co-accused were involved in assaulting the injured Nadeem. One of them was allegedly armed with revolver/pistol, which was pointed out at him and during the scuffle, he sustained injury to his thigh. It is also apparent that the statement of Nadeem was recorded on 10th November, 2020. Station diary and the statement also indicates that there was hesitation on his part to give his statement. In any case, it is not specified by him that the applicant was the person, who was involved in either abducting him and assaulting him with iron rod or firing at him, which role attributed to the other accused. The summary of the investigation conducted by the investigating agency, which appears in the charge-sheet filed against the co-accused indicates that the applicant was implicated as a conspirator. I have perused the statement of Harshal Kale, which was recorded during the

course of investigation. The statement primarily indicates that the co-accused had approached him and represented that they are in need of vehicle for the purpose of visiting Pune. Applicant was present where he met accused. Applicant had paid part amount of hire charge. There cannot be inference in the absence of any other corroborative material that the applicant had knowledge that the co-accused were planning to abduct the injured or assault him as stated in the said statement. There is no other evidence to indicate that any witness had seen the applicant being present at the scene of the offence. In these circumstances, the applicant cannot be subjected to custodial interrogation and the case for grant of bail is made out. Hence, I pass following order.

ORDER

- (i) Anticipatory Bail Application No.1047 of 2021 is allowed.
- (ii) In the event of arrest of applicant in connection with CR No.0349 of 2020 registered with Satara Police Station, Dist. Aurangabad, the applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report Investigating Officer on 20th, 21st and 22nd October, 2021 at 11.00 am to 01.00 pm and thereafter as and when called for, till filing of charge-sheet.
- (iv) Application stands disposed of.

(PRAKASH D. NAIK, J.)

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