

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1362 OF 2021

Sarfraj S/o. Firoz Tadv Pathan,
Age 28 years, Occ. Business,
R/o. Row House No. K-9,
Patel Pride, Sadat Nagar,
Aurangabad and
R/o. Chistiya Colony, Aurangabad.

...Applicant

VERSUS

The State of Maharashtra

...Respondent

Mr. J.M. Murkute, Advocate for the applicant
Mr. A.S. Shinde, APP for the respondents-State

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CORAM : PRAKASH D. NAIK J.

DATE : 4TH DECEMBER, 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. The co-accused Ejaj has been granted anticipatory bail by this court.

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 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

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.P.C. 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. The applicant is not entitled for parity. The case of Ejaj Pathan is distinct. Statement of Harshal furnished details of conversation with applicant, which shows that applicant is conspirator. Hence, application for anticipatory bail may be rejected.

6] The prosecution case is that on 4.11.2020, victim Nadim was abducted and assaulted. He had sustained bullet injury on his thigh. He was provided medical treatment and the bullet was removed from his person. The co-accused are arrested. The prosecution case qua the applicant is that, he is one of the conspirators in commission of the crime. The co-accused were involved in assault and abducted victim Nadeem Pathan. One of them was armed with revolver/pistol. The weapon has been recovered. Statement of Nadim was recorded on 10.11.2021. To establish the charge of conspiracy, the prosecution is relying upon the statement of Harshal Kale, which was recorded during the course of investigation.

7] The learned counsel for the applicant had contended that the co-accused Ejaj Firoj Tadvi Pathan has been granted anticipatory bail by this court. The case of the said accused and the

present applicant is similar. The applicant has not participated in the assault. However, on perusal of the statement of Harshal Kale, it can be seen that the applicant is conspirator in commission of the crime. The case of Ejaj Pathan can be distinguished. Although Harshal Kale has made reference to Ejaj Pathan in his statement, the overt act attributed to applicant in the statement shows that applicant was party to plan of attacking injured. There is specific overt act attributed to the applicant which shows that he was party to the conspiracy to commit crime. Harshal Kale in his statement has stated that he was acquainted with the family of the applicant. The applicant and his brothers met the witness. They requested him to provide the vehicle on rental basis on hire charges. The applicant told him that he intends to go to his friend for 3 days. On 2.11.2020, the witness received a call from Sarfaraj/applicant. He was told that his car is required on the next day. The witness provided him the car. On 3.11.2020, the witness called the applicant and inquired with him, whether he has left. The call was picked up by Ejaj, who told him that tyre of the care is puncture. On 4.11.2020, Sarfraj called the witness and told him that he should not worry if the police call him. There was quarrel between his younger brother at Paithan with some other persons. He has left the car at Paithan. The witness thereafter repeatedly made calls to the applicant and informed him that he would send his person to pick up the car. The applicant gave evasive answers about the place where the car is lying. Thereafter, he received the call from the Crime Branch and inquired with him, whether the car belongs to him. He was also informed by the Crime Branch police that the car number has been changed and it is being used by the co-accused. Thereafter, the witness tried to contact the applicant. He gave excuses about the quarrel of his brother. It is also pertinent to note that the car was seized and on search of the car, it was found that there were weapons in the car. The tenor of the statement of

the said witness would indicate that the applicant had all the knowledge about the plan/conspiracy.

8] Considering the aforesaid circumstances, the applicant is not entitled for grant of anticipatory bail.

O R D E R

Anticipatory bail application No. 1362 of 2021 stands rejected and disposed of.

[PRAKASH D. NAIK]
JUDGE

GRT/-.