

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.477 OF 2020

Ashpak Abbas Pathan

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Aniket Nikam i/b. Vivek N. Arote, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th MARCH, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1149/2018 registered with Wakad Police Station, under sections 395, 397, 307 r/w 34 of the Indian Penal Code, under sections 3 and 25 of the Indian Arms Act and under section 37(1) 135 of Maharashtra Police Act.
2. Heard Mr.Aniket Nikam, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.

3. The prosecution story is that the accused namely Akshay Bhimrao Godambe, Kiran Dnyandeo Kale, Abhilash Dattatray Mohol, Rohit Pradip Devle, Amit Dnyandeo Kale and the present Applicant in collusion with each other, decided to rob one Hariom Mehersingh Singh, who is the first informant in this case. To achieve their object, accused Rohit Devle opened a fake facebook account in the name of Nandini Mohol. The accused including the present Applicant contributed money and bought a countrymade pistol. Accused Kiran Kale made two fake number-plates. They were put on the four wheeler of accused Abhilash.
4. On 01/12/2018 the Applicant and Rohit Devle kept watch on the informant's society. After the informant left his society, the other accused followed him on their four wheeler. After some time when the informant stopped at some distance, the accused entered his car and threatened him with a pistol. The informant tried to escape. At that time, the accused Akshay Godambe fired at him causing injury on his leg. He raised shouts and others came to his rescue and on this basis FIR is lodged.

5. Learned counsel for the Applicant submitted that the charge-sheet is filed against other accused. In the charge-sheet there is statement dated 03/12/2018 given by Akshay Godambe, pursuant to which a weapon was recovered. But in that statement there is no reference to the present Applicant. He submitted that the Applicant's role is very minor and his participation or otherwise can be established through CDR. For that, his custodial interrogation is not necessary. He submitted that on the basis of statements made by the co-accused in the police station, custodial interrogation should not be held against him as those statements are not admissible.

6. Learned APP opposed this application. He submitted that the offence is serious and the Applicant could not be arrested since December 2018. He submitted that during investigation, Akshay Godambe and Kiran Kale have given their statements describing the role of the present Applicant. He submitted that custodial interrogation of the Applicant is

necessary and the offence is serious, for which anticipatory bail cannot be granted.

7. I have considered these submissions. The offence is indeed serious. The accused had hatched a plan to rob the informant. For that purpose they had made preparations. They had opened a fake facebook account in the name of the Nandini Mohol. Accused had gone to MP to buy a firearm. Even Applicant had paid for the firearm. On the date of incident also, he had kept watch on the informant's activities. Therefore at this stage, his custodial interrogation is absolutely necessary.

8. Considering material available with the police, at this stage, it cannot be said that the allegations and case against the present Applicant are baseless. Considering this background, his custodial interrogation is necessary and anticipatory bail cannot be granted to him and therefore application is rejected.

(SARANG V. KOTWAL, J.)