

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

ANTICIPATORY BAIL APPLICATION NO.797 OF 2021

Makhansingh Ajitsingh Kalyani Applicant
Versus
The State of Maharashtra Respondent

Mr. Subhash Jha, Advocate a/w. Harekrishna Mishra,
Siddharth Jha i/b. Law Global, for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 23rd MARCH, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.760/2020 registered at Wanwadi police station, Pune on 24.7.2020 under Sections 307, 144, 143, 146, 148, 149 of the Indian Penal Code, under Sections 4 & 25 of the Indian Arms Act and under Section 37(1) and 135 of the Maharashtra Police Act. Subsequently, Section 302 of IPC was added.

2. Heard Shri Subhash Jha, learned Counsel for the Applicant and Shri Ajay Patil, learned APP for the State.

3. The FIR in this case is lodged by Nishant Nanaware on 24.7.2020. He has stated that the deceased in this case, namely, Paitarsingh Tak was released from Yerwada Jail. On 23.7.2020, at about 10:00 p.m., when the informant and Tohit were coming towards Samaj Mandir, Anand Nagar, Ramtekadi, Pune the accused Vikisingh Singh, Hukum Singh, Ravi Singh, Suraj Patil and the present Applicant came there with sword and sickle. The FIR mentions that all of them assaulted Paitarsingh with their weapons. The informant and others concealed themselves in a nearby galli. After some time they came near him. They saw that he was unconscious. He was taken to Noble Hospital. He had suffered injuries on his head, hands and shoulder. Tohit informed the family of the deceased. Paitarsingh's mother and one Ballu Singh came to Sasoon Hospital. On this basis, the FIR was lodged.

4. Initially, the investigation was carried out and the charge-sheet was filed against four accused, namely, Vikki Singh, Suraj Patil, Vikki Mahadule and Anand Late. The report under Section 169 of Cr.PC. was filed in respect of four

other accused including the present Applicant. The others were Ravi Singh, Hukum Singh and Vikki Singh. This report was filed on 23.10.2020. The learned Magistrate passed an order on 26.10.2020 issuing notice to the informant and called for say on the report filed under Section 169 of Cr.P.C. Thereafter, the Senior Inspector of Police attached to Wanwadi police station filed another report dated 29.10.2020 praying that the report under Section 169 of Cr.P.C. filed earlier should be treated as not pressed. Learned Magistrate passed an order on 29.10.2020 and the notice sent to the informant was called back.

5. In this background, the Applicant has preferred this application for anticipatory bail in connection with this offence.

6. Shri Subhash Jha, learned Counsel for the Applicant submitted that the investigating officer is in charge of the investigation and once he had filed a report under Section 169 of Cr.P.C., it was not proper neither it was permissible on the part of the Senior Inspector of Police

attached to same police station to file another report with a prayer that the earlier report should be treated as not pressed.

7. Shri Jha submitted that the practice of filing a report directly to the Magistrate without routing it through the Public Prosecutor does not have sanctity of law.

8. Shri Jha invited my attention to the statements of various eye witnesses including one Tohid and others. He submitted that the statement of Tohid shows that the Applicant's name was involved at the behest of mother of the deceased.

9. Shri Jha again emphasized the fact that the report under Section 169 of Cr.P.C. should not be ignored and the Applicant deserves protection of anticipatory bail. He submitted that mother of the Applicant has been pursuing this matter with various police officers pointing out this irregularity.

10. Learned A.P.P. on the other hand submitted that the Senior Inspector of Police has given reasons why the

report under Section 169 of Cr.P.C. was not pressed. He further invited my attention to the statement of mother of the deceased, which shows that she herself was also an eye witness and she has named the present Applicant.

11. I have considered these submissions. With assistance of both learned Counsel, I have perused the statements of eye witnesses referred to by both sides. As far as the report under Section 169 of Cr.P.C. is concerned, as pointed out by Shri Jha it was directly tendered by API Vishwajeet Jagtap attached to Wanwadi police station, Pune City before the Magistrate's Court. Said report shows endorsement that it was filed through Senior Inspector of Police, Wanwadi police station, Pune City. The report bears stamp of Senior Inspector of Police, Wanwadi Pune City and bears some signature. This report is not filed through the Public Prosecutor.

12. On the other hand the report dated 29.10.2020 was filed before the Magistrate by the Senior Inspector of Police, Wanwadi Police Station, Pune City through the Public

Prosecutor who was assigned the matters in the J.M.F.C. Court, Pune. Thus, as submitted by Shri Jha himself, filing of the report under Section 169 of Cr.P.C. itself was not proper, though Shri Jha has relied on that report.

13. The report dated 29.10.2020 clearly mentions that the report under Section 169 of Cr.P.C. was filed without consent of the Senior Inspector of Police. Said report has further explained that the investigating officer API Jagtap has taken signature of PSI Wadewale as signatory to that report and it was purportedly signed on behalf of the Senior Inspector of Police of that Police Station. The Investigating Officer and PSI Wadewale were issued show cause notice for their act.

14. Section 169 of Cr.P.C. reads thus:

“169. Release of accused when evidence deficient-- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.”

15. There is a reference to the officer in charge of the police station who can file this report under Section 169 of Cr.P.C. The first report under Section 169 of Cr.P.C. was purportedly filed under the signature of the officer in charge of the police station. Said officer himself has explained that such report was not filed with his consent and he has clarified the situation with the Magistrate by filing his own report on 29.10.2020 filed through Public Prosecutor.

16. Coming back to the merits of the case, the FIR was lodged immediately on 24.7.2020 by Nishant Nanaware. He himself was an eye witness to the case. He has clearly named the present Applicant. This was the statement which was first in point of time. Thereafter the statement of other eye witnesses, namely, Tohid and Melwin were recorded.

17. Tohid in his statement dated 24.7.2020 has not described the incident. Melwin has described the incident. His statement was recorded on 30.7.2020 but he has named Vikkising, Suraj Patil and he has added that there were two

others with them with weapons.

18. The important statement on which Shri Jha has relied on is Tohid's statement recorded on 12.10.2020. In that statement, Tohid has stated that the Applicant's name was included by the first informant at the behest of mother of the deceased. Significantly this statement was recorded on 12.10.2020. Said witness Tohid has not narrated any such pressure exerted by the deceased's mother in his statement recorded on 24.7.2020.

19. Besides that, there are statements of other eye witnesses, namely, Nagesh Ghodake, Faizan Ansari, etc. but they have not named anybody.

20. Therefore, the statements of above witnesses are important. The mother of the deceased herself has given her statement on 30.7.2020. In her statement she has stated that she has seen the incident and she has named the present Applicant. She has ascribed the specific role of assault with sword to this Applicant.

21. The statements of the first informant and mother of the deceased are recorded on 20.1.2021 and 17.12.2020, under Section 164 of Cr.P.C. in which they have stuck to their stories naming the present Applicant as one of the assailants. Besides this, Tohid has given his supplementary statement on 19.1.2021. There again he has named the present Applicant as one of the assailants.

22. The deceased had suffered many injuries. He has suffered 34 injuries which can be attributed to the sharp weapons. In this view of the matter, the offence is very serious. There is sufficient material against the present Applicant. The protection of anticipatory bail cannot be granted to him. Hence, the Application is rejected.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
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(SARANG V. KOTWAL, J.)

Deshmane (PS)