

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2028 OF 2019**

Shrihari Bajirao Shivnekar

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr.Tapan Thatte a/w Mr.Amar Patil, Advocates for Applicant.
Smt.M.H. Mhatre, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 7th August, 2021.****P.C. :**

1. Heard Mr. Thatte, learned counsel for the Applicant and Smt. Mhatre, learned A.P.P. for the State. Perused charge-sheet.
2. By an Order dated 20th September, 2019 the Applicant was granted interim relief.
3. Mr.Thatte, learned counsel for the Applicant submitted that, co-accused, namely, Nilesh C. Bajgude and Kalpesh S. Bhagat, who have been attributed more serious role than the Applicant, have been granted pre-arrest bail by this Court, by its Order dated 15th March 2018. He submitted that, as per the prosecution case itself, the Applicant has been seen in the CCTV footage, however no specific role has been attributed to the Applicant either of

assault or having any weapon in his hand. He submitted that, the First Information Report and other statements of witnesses initially mentions about 12 known accused persons and the name of the Applicant is not mentioned in the F.I.R.. That, it is only in supplementary statements of two witnesses, namely, Vishal Paswan and Rajiv Shivprakash Ram, who after watching CCTV footage stated that, the Applicant was seen along with other accused persons on the date and time of incident. However, they have also not attributed any specific role to the Applicant and therefore the Applicant is entitled for parity with co-accused Nilesh C. Bajgude and Kalpesh S. Bhagat.

4. Prima facie it appears that, as a matter of fact, except the presence of Applicant at the scene of offence along with other accused persons, no categorical role has been attributed by the said two witnesses.

Perusal of charge-sheet would indicate that, there is substance in the submissions made by the learned counsel for the Applicant. The alleged role attributed to the Applicant in the present crime is otherwise also much lessor, than the role attributed to other two co-accused, namely, Nilesh C. Bajgude and Kalpesh S. Bhagat, who have been granted pre-arrest bail by this Court and therefore the Applicant is entitled to be protected by pre-arrest bail on the ground of parity.

5. In view of the above, interim relief granted by Order dated 20th

September 2019, is hereby confirmed. However, the condition to attend the Investigating Officer is waived.

6. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]

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