

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

**ANTICIPATORY BAIL APPLICATION NO. 2415 OF 2019
WITH
INTERIM APPLICATION NO. 1552 OF 2019**

Sachin Sudam Pardeshi ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2551 OF 2019**

Roshan @ Rutik Kishor Pardeshi ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Satyavrat Joshi, i/b Nitesh Mohite, for the Applicant in
ABA/2415/2019.

Mr. Sanjeev Kadam, i/b Mr. Sidheshwar N. Biradar, for the
Applicant in ABA/2551/2019.

Ms. Jyoti Lohokare, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 27th NOVEMBER, 2021

PRONOUNCED ON: 2nd DECEMBER, 2021

COMMON ORDER:-

1. The applicants Sachin Pardeshi and Roshan @ Rutik Pardeshi, who have been arraigned as accused nos.1 and 4, respectively, in CR No.1259 of 2019, registered at Chakan Police Station, Pune, have preferred these applications for pre-arrest bail. By orders dated 7th November, 2019 and 21st November,

2019, the applicants Sachin (A1) and Roshan (A4), respectively, were granted interim protection till the hearing of the applications.

2. The indictment against the applicants runs as under:

(a) Mandar Deshmukh (hereinafter referred to as, “the first informant”), is a resident of Manik Chowk, Chakan, Taluka Khed. On 29th September, 2019, at about 1.30 pm., the first informant, his brother Kedar Deshmukh, Salman Mulani and Onkar @ Bhaiyya Karpe and two others were on their way to Chakan Police Station to obtain permission for organizing Navratri festival. There was a traffic jam as a function was being held at Jawalekar Jewelers and vehicles were parked on the road. The first informant and his associates allegedly informed the Jawalekar jewelers to remove the vehicles which were parked indiscriminately so that the traffic could move freely.

(b) The first informant alleged, while they were on their way to Manik Chowk, Sachin (A1) made a call on his cell-phone and called them near Wafgaonkar jewelers. Applicant Sachin (A1) and his associates Mandar Pardeshi, Kishor Jagnade and applicant Roshan (A4) intercepted them. Sachin (A1) gave a blow by means of iron rod on the motorcycle, then being driven by Salman. The first informant and Salman fell down. Sachin

(A1) got enraged at the first informant and others as they had asked the manager of Jawalekar jewelers to remove the vehicles as Sachin (A1), was the chief guest at the said function. Sachin (A1) allegedly assaulted the first informant by means of iron rod and Roshan (A4) assaulted the first informant by means of bamboo stick. When his brother Kedar tried to rescue him, the accused also assaulted Kedar as well by means of iron rod and bamboo stick. Roshan (A4) caught hold of Salman Mulani and Onkar Karpe and restrained them from coming to the rescue of the first informant and his brother Kedar. After unleashing the assault, the accused allegedly fled away.

(c) The first informant and his brother were brought at Criticare Hospital, Chakan, for treatment. The first informant thus lodged FIR against the accused leading to registration of CR No.1259/2019 for the offences punishable under Sections 307, 326, 341, 504, 506, 427 read with 34 of the Indian Penal Code, 1860, ("the Penal Code").

3. The applicants have approached the Court with a case that the offences punishable under Sections 307 and 326 of the Penal Code have not been *prima facie* made out. In fact, the informant party was the aggressor. Initially Sachin (A1) had lodged a non-cognizable report bearing No.2359/2019 against

the informant party. After leaving the police station, post lodging the said report, the informant party allegedly assaulted Sachin (A1). In the said assault, through Sachin (A1) had sustained grievous injuries, the Chakan Police registered the crime for the offences punishable under Sections 324, 294, 504 and 506 read with Section 34 of the Penal Code. In fact, the informant party ought to have been prosecuted for the offence punishable under Section 307 of the Penal Code as Sachin (A1) had sustained life threatening injuries. In view of the said counter version, as reflected in registration of CR No.1264 of 2019, the applicants deserve to be enlarged on bail in the event of their arrest as Sachin (A1) had reported the matter first in point of time. The FIR lodged by the first informant was a counterblast. In any event, the custodial interrogation of the applicants is not warranted and, therefore, they deserve the relief of anticipatory bail.

4. I have heard Mr. Joshi, the learned Counsel for the applicant – Sachin (A1), Mr. Kadam, the learned Counsel for the applicant – Roshan (A4) and Ms. Lohokare, the learned APP for the State, at some length. Perused the material on record including copy of the charge-sheet against co-accused Mandar Pardeshi and Kishor Jagnade.

5. Mr. Kadam, the learned Counsel for the applicant – Roshan (A4) would urge that the material on record indicates that cross FIR is lodged at the instance of Sachin (A1) in respect of the very same occurrence. This implies that the prosecution version does not present the actual incident as transpired. The only role attributed to Roshan (A4) is that of assaulting the first informant and his brother by means of bamboo stick and at the same time restrain witnesses Salman and Onkar Karpe from rescuing the first informant and injured Kedar. In the backdrop of the role attributed to the applicant Roshan (A4), it was humanly impossible for Roshan (A4) to simultaneously assault the first informant and his brother and also restrain the witnesses Salman and Onkar Karpe. Even the panchnama of the CCTV footage runs counter to the prosecution version. It belies the prosecution case that applicant Roshan (A4) assaulted the brother of the first informant and restrained the witnesses Salman and Onkar.

6. Mr. Joshi, the learned Counsel for the applicant Sachin (A1) would urge that the material on record indicates that the applicant Sachin (A1) had lodged NC Report against the informant party on the very day of occurrence at about 4.39 pm. Subsequent thereto the applicant Sachin (A1) was severely

beaten up by the informant party. Inviting the attention of the Court to the injury certificate issued by Criticare Hospital Pvt. Ltd., Chakan, to the effect that the Sachin (A1) had sustained grievous head injury, by a sharp and heavy object, it was urged that the applicant Sachin (A1) being himself a victim of the assault mounted by the informant party deserves to be enlarged on bail, in the event of arrest.

7. In opposition to this, Ms. Lohokare, the learned APP, would urge that the claim of the first informant that the accused accosted and assaulted the first informant and his brother finds requisite support in the statement of witnesses Salman and Onkar Karpe. In view of the direct evidence of the victims and eye witnesses, the claim of the applicants that they have been falsely implicated in the crime is simply unacceptable, urged the learned APP. In the backdrop of the nature of the material, the applicants, according to the learned APP, do not deserve the discretionary relief of pre-arrest bail.

8. The thrust of the submission on behalf of the applicants was based on the lodging of the cross FIR by applicant Sachin (A1). I have carefully perused the FIR lodged by the informant and the report lodged by Sachin (A1). It is imperative to note that the presence of the accused party at Jawalekar jewelers, on

the day of occurrence at about 1.30 pm. is rather incontestible. The applicants in the counter version, alleged that the informant and his associates came at the venue of the function and abused Sachin (A1) and asked him to remove the vehicles, on account of which there was allegedly traffic jam. Later on, when Sachin (A1) called them to inquire as to why they abused him at Jawalekar jewelers, the informant party allegedly assaulted him by means of stick.

9. From the perusal of the version in the FIR and the cross FIR lodged by Sachin (A1), it becomes evident that the first incident occurred at about 1.30 pm. near Jawalekar jewelers. The second incident of alleged assault occurred at about 3.30 pm. The case of the first informant and the cross case, is not divergent on the point that Sachin (A1) had called the informant party by making a phone call at about 3.30 pm. It is alleged by the prosecution that after the informant party reached Wafgaonkar jewelers the accused and their associates intercepted them and unleashed blows. Thus, to the stage of Sachin (A1) calling the informant party, by making a call on phone, the case and the cross case appear to proceed on similar lines.

10. Indisputably, the first informant Mandar sustained grievous injuries. In the light of the nature of the defence and the registration of a case and cross case, to fasten the liability the aspect as to who was the aggressor may become critical. There is material to indicate that it was the accused party which had called the informant party by making the phone call. The claim of the prosecution that the vehicle was intercepted by throwing a rod finds support in the CCTV footage. Absence of footage of entire incident from start to finish does not detract materially from the prosecution case, at this stage. In this backdrop, the aspect as to who was the real aggressor, is a matter which essentially warrants investigation.

11. At this stage, however, in the backdrop of the nature of the defence, the presence of the accused at the place and time of the occurrence can hardly be contested. There is adequate material in support of the claim of the first informant that he and his brother Kedar were assaulted, especially in the statements of Salman and Onkar, the eye witnesses to the occurrence. It would thus be hazardous to draw an inference that there is no *prima facie* material to connect the applicants – accused nos.1 and 4 with the crime.

12. It is true that the injury certificate of Sachin (A1) reveals that Sachin (A1) also had sustained grievous injury in the course of the said occurrence. However, this factor is not decisive for determining the entitlement of the applicant for pre-arrest bail. Case and cross-case essentially represent two versions of the same incident.

13. In the totality of the circumstances, there is adequate material to indicate the complicity of the applicants – accused, *prima facie*.

14. Mr. Joshi, the learned Counsel for the applicant – Sachin (A1), would urge that since the applicants have been on interim protection by order dated 7th November, 2019 and 21st November, 2019 and post completion of investigation charge-sheet has been lodged against the co-accused, at this length of time, there is no propriety in now arresting the accused – applicants. Custodial interrogation of the applicants – accused is not at all warranted. Indeed, charge-sheet has been lodged against the co-accused, showing the Sachin (A1) and Roshan (A4) as the persons, who have been granted interim protection by this Court. However, in the face of the material on record, especially the material to demonstrate the *prima facie* complicity of the applicants –

accused, the said factor by itself would not justify the continuation of the protection of pre-arrest bail.

15. I am, therefore, not inclined to grant pre-arrest bail.

16. Hence, the following order:

: O R D E R :

- (i) The applications stand rejected.
- (ii) Interim protection granted by this Court by orders dated 7th November, 2019 and 21st November, 2019 stands vacated.
- (iii) In view of the rejection of the applications, all pending interim applications also stand disposed of.
- (iv) It is, however, made clear that the observations made hereinabove are confined to consideration of the prayers in the applications for pre-arrest bail and they may not be construed as an expression of opinion on the merits of the matter nor the Trial Court shall be influenced by any of the observations made hereinabove while deciding the guilt of the applicants/accused.

[N. J. JAMADAR, J.]

At this stage Mr. Kadam, the learned counsel for the applicant in Anticipatory Bail Application No.2551 of 2019, seeks extension of interim protection for a period of four weeks.

Mr. Kadam further submits that, the applicant Roshan Pardeshi's (A4) marriage is scheduled to be solemnized on 8th December, 2021. In that view of the matter, the interim protection be continued for few days beyond 8th December, 2021.

Ordinarily, once this Court rejects the application for pre-arrest bail, the continuation of interim protection is not granted. However, in view of the fact that the applicant Roshan Pardeshi's (A4) marriage is scheduled on 8th December, 2021, the interim protection granted to the applicant Roshan Pardeshi (A4) in Anticipatory Bail Application No.2551 of 2019 is continued till 15th December, 2021.

SANTOSH
SUBHASH
KULKARNI

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[N. J. JAMADAR, J.]