

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 479/2021.

Akash Prabhakar Thorat.

-VERSUS-

The State of Maharashtra, through P.S.O. Khamgaon City.

Shri A.D. Bhate, Advocate for the Applicant.
Shri H.D. Dubey, A.P.P. for the Non-applicant.
Shri H.R. Gadhia, Advocate for the Informant.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 15, 2021.

Heard learned Counsel for the parties.

2. In anticipation of arrest in Crime No.170/2021, registered with Khamgaon City Police Station, District Buldhana for offence punishable under Sections 143, 147, 148, 149, 307, 325 and 504 of the Indian Penal Code, the applicant is seeking pre-arrest bail.

3. It is the prosecution case that the applicant attempted to commit murder of the informant by assaulting with deadly weapon. In the said assault, besides informant, some other also sustained injuries. One Rajendra Ingle has lodged a report regarding the

incident. It is stated that he was running a shop at Khamgaon Bazar. On 27.03.2021, around 2 p.m., assailants came to his shop and demanded money for running shop. At that time, all the assailants, who were holding different kind of weapons, have indiscriminately assaulted the informant and his associates. It is specifically stated in the first information report that initially co-accused Mohan Ahir, Ramu Ahir and Ratan Ahir arrived on the spot and picked up a quarrel. They telephonically called their associates on the spot and then the further incident took place. The informant Rajendra has named other assailants, their specific role and added that they were also accompanied with 7 to 8 other unknown assailants, who joined the assault.

4. While claiming bail, the learned Counsel appearing on behalf of the applicant – Akash Thorat, has submitted that the name of the applicant was not mentioned in the first information report. According to him, after few days from the occurrence, name of the applicant has been falsely implicated. It is submitted that the applicant was not at all present at the time of occurrence, but, out of rivalry, he has been dragged in

the incident. The learned Counsel further submitted that while dealing with bail application of co-accused Shubham Thakur and Hitesh Lata, this Court has observed that their names were subsequently added in supplementary statements and accordingly released them on bail. Infact the said order of this Court pertains to grant of regular bail, which has different considerations.

5. On the other hand, the learned A.P.P. would submit that this Court has rejected the pre-arrest bail application of co-accused Akashay Ahir. Moreover, the learned A.P.P. took me through the supplementary statements of injured witnesses wherein, specific reference of applicant along with weapon was made.

6. Perused case papers as well as copy of charge sheet. The incident took place on 27.03.2021 in the afternoon. On the following day, the informant Rajendra lodged a report with the police. On perusal of the first information report it reveals that the injured named so many assailants and further added that they were accompanied with 7-8 assailants. The informant stated that he himself along with Nilesh, Gulab and Abhay

sustained injuries in the said incident. He has spoken about the role of named assailants with particulars. Besides that, he made a general statement that 7-8 unknown assailants were armed with iron rod, wooden rafters and sticks, by which they also dealt blows. It reveals from the record that three injured, including the informant, were discharged on the date of the incident itself. Though one of the injured was re-admitted, it is stated that he was also discharged. The prosecution is laying much stress on the supplementary statements of the informant and injured, which are recorded after one week from the occurrence.

7. I have carefully examined statements of informant Rajendra, injured – Nilesh, Gulab and Abhay. The informant Rajendra in his supplementary statement dated 05.04.2021, has assigned role to the applicant of assaulting by means of iron rod. Likewise injured Gulab, Nilesh and Abhay also named him in their statements. Pertinent to note that injured Rajendra in his first information report stated that he was assaulted by iron rod at his head by co-accused Mohan Ahir. In the said initial report, neither he assigned any role to the

applicant Akash Thorat, nor named him as an assailant.

8. Perused injury certificates of all the injured, which shows that besides lacerated wound and abrasions there are no other injuries, except Abhay. It is not the informant's case in his initial report that one unknown assailant dealt blow on his head and later he was identified as applicant Akash Thorat. However, specifically informant stated in his initial report names of persons who assaulted him at his head by iron rod. Pertinent to note that the supplementary statement is silent on the point as to how he came to know the name of other assailants, who first time surfaced in the supplementary statement. It requires to be noted that in supplementary statements also the informant stated that besides additional named assailants, there were another 7-8 unknown persons, therefore, prima facie it is difficult to comprehend the things together.

9. Though this Court has declined to grant pre-arrest bail to Akshay Ahir, however, his case stands on different footing. Suffice to say that his name was mentioned in the first information report along with his specific role. The statement of injured Abhay was

recorded after three months from the date of occurrence. Prima facie it reveals that the informant has specifically named the assailants in his initial report. The possibility of false implication after one week cannot be ruled out. Moreover, in supplementary statement the informant has changed names of some of the assailants, corrected some names and made addition, therefore, there appears to be a reasonable doubt about the presence of the applicant on the spot. Already injured are discharged and charge sheet has been filed against co-accused. Having regard to all these facts, the applicants liberty can be protected by directing him to join the course of investigation. Needless to say that the above observations are made on prima facie basis, which will have no impact on the merits of the case. In view of that, following order is passed :

- (i) Criminal Application is allowed and disposed of.
- (ii) The ad-interim protection granted to the applicant vide order dated 02.08.2021, is hereby made absolute on the same terms and condition, with a modification that the applicant/accused shall attend the

concerned police station on every Sunday between 11 a.m. to 2 p.m. for a period of 6 months from today or till the filing of the charge sheet which ever is earlier.

JUDGE

Rgd.