

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.506 OF 2021

Mohd. Laik s/o Mohd. Hafij Ansari

..vs..

State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.W. Sambre, Advocate for the applicant.
Shri M.J. Khan, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 01/10/2021.

Heard.

2. The applicant is seeking pre-arrest bail in Crime No.522 of 2020 registered at Khaparkheda Police Station, Nagpur Rural for the offence punishable under Sections 341, 307, 324, 323, 427, 143, 147, 148 and 149 of the Indian Penal Code.

3. The Non-applicant/State resisted bail by filing affidavit-in-reply.

4. The informant – Aasif Hussain stated that on 25.08.2020 around 1.00 pm, he was proceeding by two wheeler along with deceased Mohib. They were accosted in the way by several named assailants including the applicant Mohd. Laik Ansari and five to six unknown persons. All of them beated the deceased Mohib by means of sticks. They also damaged the two

wheeler, hence the report.

5. Initially, the Police have registered the crime for the offence punishable under Section 307 of the Indian Penal Code. However, as Mohib died during the treatment, Section 302 of the Indian Penal Code has been added.

6. Learned Counsel appearing for the applicant would submit that the applicant was not at all present at the time of occurrence. Precisely, he took plea of alibi by stating that at the relevant time, the applicant who is a Sarpanch, was at his Gram Panchayat Office of Village Walani. In support of said contention, he has produced three affidavits sworn by Data Operator, Clerk, and electrician to vouch about the applicants' presence in Gram Panchayat Office, Walani at the relevant time. Besides that, it is submitted that informant Aasif Hussain has sworn an affidavit dated 07.09.2020 stating that at the relevant time, the applicant was not present nor played any role in the occurrence. In his affidavit, informant tried to explain by stating that he being illiterate, he was unaware about the content of First Information Report, taken down by the Police.

7. *Prima facie*, it reveals that within few hours from the occurrence, First Information Report, with speaks name of the applicant, has been lodged. The informant particularly, alleged that the applicant

along with other co-accused beaten the deceased Mohib by means of sticks which took his life. I am afraid to consider the plea of Alibi at this preliminary stage. Moreover, merely on the basis of an affidavit of some persons from Gram Panchayat, no inference can be drawn at this premature stage.

8. Perusal of investigation paper reveals that there are two oral dying declarations, which speak that injured himself has stated the name of the applicant as assailant along with co-accused. Pertinent to note that, statement of those persons were recorded on 01.09.2020 and 02.09.2020, i.e. prior to the informants' affidavit dated 07.09.2020 by which he has excluded the applicant. Therefore, at this stage no weightage could be given to such belated affidavit of the informant.

9. Learned Counsel for the applicant would submit that this Court in Criminal Application (ABA) No.1124 of 2019 with other connected matters (Chand s/o Meheboob Shaikh and anr. vs. State of Maharashtra) has granted pre-arrest bail despite the name of accused was mentioned in First Information Report. Reading of said order discloses that while granting pre-arrest protection, it weighed to the Court that no overt act was ascribed to the then accused. Besides that on the basis of facts and circumstance of each case, entitlement for pre-arrest bail has to be independently decided.

10. In short, the Police report (First Information Report) which was lodged within few hours from the occurrence, bears specific name and role of the applicant/accused. The Post Mortem report discloses that there are 29 injuries on the person of the deceased. Therefore, at this stage, merely on the basis of plea of alibi or beleted affidavit of the informant, the valuable rights of the Police to have custodial interrogation, cannot be taken away. *Prima facie* material exists against the applicant, hence, he is not entitled for pre-arrest bail.

11. In view of the above, applications stands rejected.

JUDGE

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