

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.374 OF 2022

AJIT S/O BANSHI SHIROLE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. R. R. Karpe, Advocate for applicant.
Mrs. Vaishali Patil Jadhav, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12.04.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.45 of 2022 registered with Belwandi Police Station, Shrigonda, Dist. Ahmednagar for the offences punishable under Sections 307, 327, 143, 147, 148, 149, 504, 506, 341 of Indian Penal Code.

2. Heard learned Advocate Mr. R. R. Karpe for the applicant and learned APP Mrs. Vaishali Patil Jadhav for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that applicant has been falsely implicated. Perusal of the FIR would show that the incident is alleged to have occurred at about 2.35 a.m. on 27.01.2022 and the FIR has been lodged on 07.02.2022. Therefore,

there is apparent delay in lodging the FIR. As regards the applicant is concerned, the allegations are that he and co-accused Ranjit had assaulted the informant by Tommy and rod and they have caused fracture to his legs and hands. Co-accused Ranjit has been released on bail by learned Additional Sessions Judge, Shrigonda. The role attributed to the applicant is also same and, therefore, on the ground of parity also, the applicant deserves to be released on bail. In fact, wedding of co-accused Ranjit was scheduled on 26.01.2022 and the marriage party had left Aurangabad on 26.01.2022 in the afternoon in tempo traveller. Even the tole receipt of the said vehicle has been produced to show that the said vehicle passed the tole plaza at the relevant time. After the marriage was over at about 4.00 p.m., it is hardly possible that both of them would have gone to village Chimbhle in Shrigonda taluka, Dist. Ahmednagar, which is about 210 kms away. It shows that there is false implication. The applicant has a permanent place of abode and is ready to cooperate with the investigation.

4. Per contra, learned APP has strongly opposes the application and submitted that there are specific allegations against the applicant. Applicant is also having criminal antecedents. He was involved in Crime No.64 of 2014 registered with Belwandi Police Station for the offences punishable under Sections 307, 143, 147, 148, 149, 452, 337, 323, 504,

506 of Indian Penal Code with Section 4 punishable under Section 25 of the Indian Arms Act, so also in Crime No.64 of 2017 registered with same police station for the offences punishable under Section 37(1)(3) punishable under Section 135 of the Maharashtra Police Act. In fact, the design of the offence was made in such a way that nobody would take suspicion on the applicant as well as accused No.3 whose wedding was allegedly performed on 26.01.2022. The applicant is absconding. The stolen articles are yet to be recovered. Statements of witnesses would show that real brother of the informant Sandip Adagale is the eye witness. After the informant was taken to Pyramid Hospital at Dound, his statement has been recorded by Dound Police on 27.01.2022 and, thereafter, it was transmitted to Belwandi Police Station. At the earliest point of time also, the informant has stated that he was assaulted by accused Nos.2, 3, 4 and 5. There is no deviation in the same and, therefore, the custodial interrogation of the applicant is necessary. He is not entitled to the discretionary relief.

5. At the outset, it is to be noted that after the alleged incident had taken place in the intervening night of 26.01.2022 to 27.01.2022 to be precised at 2.35 a.m. on 27.01.2022, the informant is stated to have been immediately taken to Dr. Sachin Jadhav, who is doing medical practice at village Chimbhle. The statement of said doctor under Section

161 of the Code of Criminal Procedure would show that when the informant was brought to his hospital on 2.15 a.m. on 27.01.2022, he went to his hospital and examined one Dharma @ Babasaheb Adagle. Informant has given his name as Balasaheb Babasaheb Adagle and when he had received severe injuries, the doctor asked him as to what had happened. He told that he was returning from a function called Jagran Gondhal from Waghole and he was assaulted by somebody. Thereafter, the concerned doctor had given him preliminary treatment and asked him to be taken to Government Hospital or any other hospital. Then it is stated that he was taken to Pyramid Hospital at Dound, Dist. Pune. Informant was admitted at about 6.48 a.m. Medico Legal Certificate was given to Police Inspector, Dound Police Station and it appears that thereafter, his statement has been recorded. He has stated that he was assaulted by Ranjit Shirole, Ajit Shirole, Bacchi Shirole (as it is appearing, but it might be Banshi Shirole) and Anjana Shirole. It was then stated that he was assaulted by motorcycle shock observer and rod. When this statement, which was recorded by Dound Police was transmitted to Police Inspector, Belwandi Police Station, that has not been considered as FIR, but the Police Inspector has stated that inquiry should be made and then legal action be taken. Thereafter, it appears that on 06.02.2022, the present FIR was got recorded by Belwandi

Police by going to Pyramid Hospital and that has been treated as FIR. It is the settled position of law that there cannot be two First Information Reports. What was the hurdle for the police to treat the statement recorded on 27.01.2022 as FIR is a question and they will have to give answer for that at the time of trial. Further, from the police papers it is appearing that the Belwandi Police received papers on 04.02.2022 but no immediate action has been taken and the FIR/statement has been recorded on 06.02.2022. There is no mention of accused Surjit Banshi Shirole in the statement recorded on 27.01.2022 and as regards the present applicant and co-accused Ranjit is concerned, it is then stated that they had assaulted him by Tommy and rod, whereas earlier it was by shock observer and rod. At this stage, the statement of the alleged eye witnesses are also required to be considered. Witness Sandip, who is the real brother of the informant, says that his brother i.e. informant left the venue at 2.30 a.m. on 27.01.2022 and then he also waited for some time and then left to go to his house. After he came near the Well belonging to one Chanduseth Chordiya, he found that his brother was lying on the road. His motorcycle was also lying on the road and, at that time, all the accused persons were present. All the male accused persons were assaulting his brother. Accused – Surjit was assaulting by the rod of shock observer of the motorcycle and other persons were having iron

rod, iron Tommy and stick. He states that accused - Anjanabai Shirole was also present there. After they saw the witness, all of them fled and while going, they told that he would be also dealt with the same way his brother has been dealt with. After getting information about the incident, his brother says that he had taken the informant to the hospital of Dr. Jadhav. It is hard to believe that mother of the applicant would be at the spot at odd hours i.e. 2.30 a.m. and will not do anything. No doubt, the *plea of alibi* cannot be considered in bail application, but the fact will have to be mentioned that accused Ranjit got married at about 4.00 p.m. on 26.01.2022 at Shakya Nagar, Aurangabad and then whether the entire family, who would be naturally present at the time including the bride-groom would have reached the spot at 2.30 a.m. is a question.

6. As regards the criminal antecedents for Section 307 is concerned, in the FIR itself it has been mentioned that there is enmity between Vitthal Adagale, who is now the witness in this case and the accused persons and offence under Section 307 was registered against both the parties. Therefore, even the witnesses taken in this case might be an accused in the cross case. Another fact is that, that offence had allegedly taken place in 2014. Whether its repurgations can be there till 2022 and the motive that has been stated by the informant is that he

had helped in 2014 to his cousin brother Vitthal Adagale and his sons to be taken to hospital when that offence was registered. Therefore, the motive also appears to be shaky and hard to believe.

7. Co-accused Ranjit has been granted bail by the learned Additional Sessions Judge, Shrigonda. Though certain observations are rather funny, yet we are required to consider the ultimate result and, therefore, the applicant who is similarly situated, having equal allegations, deserves to be granted bail on the ground of parity. Interest of investigating agency is also required to be protected and, therefore, stringent conditions are required to be imposed. Hence, the following order :-

ORDER

I) Application stands allowed.

II) In the event of arrest of applicant – Ajit Banshi Shirole in connection with Crime No.45 of 2022 registered with Belwandi Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 327, 143, 147, 148, 149, 504, 506, 341 of Indian Penal Code, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

III) The applicant shall remain present before the Investigating Officer on every Monday, Wednesday and Friday between 10.00

a.m. to 2.00 p.m. till filing of charge-sheet and cooperate with the investigation.

IV) He shall not tamper with the evidence of the prosecution in any manner.

V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm