

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.823 OF 2022

MAYUR BALASAHEB SOMVANSHI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Narayan B. Narwade
APP for Respondent : Mr. V. M. Kagne
...

CORAM : S. G. MEHARE, J.

DATE : 25-07-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State.

2. The prosecution case, in brief, is that on the day of the incident, i.e., 23.05.2022, three boys were chit-chatting on the top floor of one building. That time all the accused went there. They assaulted them with deadly weapons. So far as the present applicant is concerned, it has been alleged that he assaulted injured Rohit Joshi to his right leg. The injured was immediately taken to the Government Hospital. The MLC placed on record reveals that he was examined at 11.00 p.m. Injuries examined by the Doctor at District Hospital Ahmednagar were simple. It also reveals that the Medical Officer has noticed the injury over the left knee. Then on the very next day, he was shifted to the private

hospital. The medico-legal certificate issued by the private hospital shows that on these allegations, a serious offence has been registered. The complainant has a simple injury on his right leg knee. The record placed by the prosecution reveals that a private hospital sent the MLC report to the police station along with the history of the incident and the spot of the incident. The co-accused have been arrested. The prosecution wants custodial interrogation of the applicant to recover a sword used by him.

3. The learned counsel for the applicant would submit that the applicant resides in the same locality where the incident happened. The injured and the applicant belongs to different political parties. No weapon has been used by the applicant. The police had an intimation of the incident immediately after the incident. The police knew the spot of the incident, but they did not immediately visit the spot of the incident. However, after filing FIR, the police visited the spot of the incident on 22.05.2022 and recovered some weapons from that spot. This has been done afterthought and under the pressure of sitting MLA belonging to the party to which the injured are the members. In fact, the history of assault by the applicant has not been disclosed immediately to the Medical Officer. The applicant and the injured are well known to each other. The police did not register the crime promptly.

4. It has been alleged that the applicant and his associates

assaulted three persons. One of them had suffered no injuries at all, but he also kept mum for a few days. Then they plotted the conspiracy, and the police managed to record the statement under the directions of the political persons. The statements of the witnesses are a stereotype. The statements of the injured and others have been prepared with the sole intention of seeing the applicant behind bars. The applicant was ever in a town; he never absconded. The weapon has been recovered from the spot of the incident to make the offence serious. The complainant has no case that after the incident, the assailants hide the weapons near the spot of the incident. Such conduct of the investigation officer raises serious doubt about the fair investigation. The applicant is made a scapegoat under political pressure. Nothing is to be recovered from the applicant.

5. The learned APP has vehemently argued that a deadly weapon like a sword has been used in committing the crime. The injured were not in a condition to give a statement. Therefore, the first information report was not immediately lodged. It has not been disputed that the weapon has been recovered from the spot of the incident. The offence is serious. Therefore, the application may be rejected.

6. Considering the allegations and the use of the weapon, the offence punishable under Section 307 of the Indian Penal Code has

been registered. The record reveals that the injured was taken to the Government Hospital soon after the incident. He was examined there, and before completing the treatment, he was shifted to one private hospital. The prosecution has nothing to point out whether the Government Medical Officer sent the MLC to the Police Station. However, the record reveals that the private hospital immediately intimated the police about the incident. In the said report, the hospital had mentioned the spot of the incident. The injury certificate of the injured Rohit reveals that the injuries suffered to him were not such that he may lose consciousness or be unable to speak. That apart, there appears a substance in the arguments of the learned counsel for the applicant that three persons were assaulted, but one was not injured. Therefore, the police had an opportunity to lodge the FIR immediately by taking a report from him. The incident happened on a terrace. The police found a sword hidden behind the water tank beneath the grass. The injury certificate reveals that all the injuries were simple, but none of the injuries has been shown to be caused by a sharp weapon like sword. Considering the conduct of the Investigation Officer and lethargy in action to be taken in a serious offence supports the suspicion raised by the learned counsel for the applicant of making the offence serious out of political rivalry.

7. Be that as it may, the weapon has been seized from the spot of the incident. Viewing the facts from all angles and considering

the lethargy of the investigation agency, the recovery of the weapons from the spot of the incident after a long gap raises suspicion. The possibility of concocting a suitable story cannot be ruled out. The offence registered is serious, but in view of the facts of the case, this Court is of the view that the applicant has a good case for anticipatory bail. The application deserves to be allowed. Hence, the following order -

- i) The application is allowed.
- ii) In the event of arrest, applicant Mayur s/o. Balasaheb Somvanshi shall be released on bail, on executing P.B. and S.B. of Rs.20,000/- with one solvent surety of the like amount, in C.R.No. 0418 of 2022, registered with Tofkhana Police Station, Ahmednagar, for the offences punishable under Sections 307, 114, 324, 323, 504, 506, 143, 144, 147, 148, 149 of the Indian Penal Code and Section 4/25 of Arms Act; on the condition that he shall attend the police station from 27.07.2022 to 29.07.2022 between 10.00 a.m. and 1.00 p.m., and shall co-operate with the investigation. He shall not tamper with the prosecution witnesses. He shall maintain peace in the locality.

(S. G. MEHARE)
JUDGE