

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 ANTICIPATORY BAIL APPLICATION NO.1529 OF 2021

PRASHANT @ PARASRAM SHIVAJI JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S.J. Salunke, Advocate for the applicant
Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th JANUARY, 2022

ORDER :

1 Applicant is apprehending his arrest in connection with Crime No.146/2021 dated 01.08.2021 registered with Peth Beed Police Station, Dist. Beed, for the offence punishable under Section 307, 326, 324, 452, 354, 327, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860 and under Section 4, 27 of the Indian Arms Act, 1959.

2 Heard learned Advocate Mr. S.J. Salunke for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the present applicant has been falsely implicated. He is in service as Clerk with District Central Co-operative Bank Ltd., Beed. There are no antecedents

against him. Though it is alleged that Crime No.28/2017 is also registered against him with Shivaji Nagar Police Station, Beed, in fact, that crime was quashed by this Court and the case has been disposed of by the learned Judicial Magistrate First Class, in view of the order passed by this Court on 22.05.2019. Co-accused have been arrested and released on bail. Perusal of the First Information Report would show that allegations have been made that the present applicant has assaulted informant and the family members of the informant. However, the fact is, informant and his family members are indulged in criminal activity of selling illicit liquor. When the applicant and his brothers had raised voice against the illegality of the family of the informant they have been threatened. Documents have been produced showing that various offences have been registered against the informant and his family members. Therefore, informant cannot be said to be a law abiding citizen. Applicant is ready to abide by the terms of the bail and since his physical custody is not required, he deserves to be released on bail. Investigation is over and charge sheet is filed.

4 Per contra, the learned APP submitted that the charge sheet has been filed showing that the present applicant is absconding. There are bunch of documents along with affidavit of Investigating Officer Rajendra Bhaskar Bankar showing that attempts were made to arrest the present applicant,

however, his whereabouts could not be known. Communication was made on 12.01.2022 by the Investigating Officer to the Bank where the applicant is serving and the reply, that is, received that since 02.08.2021 till the day of communication i.e. 13.01.2022 the applicant has remained absent from his service. General diary details of many days since 04.08.2021 have been produced to show that police were searching the applicant. When the applicant was absconding, he does not deserve any kind of protection. Further, taking into consideration the contents of the First Information Report his physical custody is required and the weapon used by the present applicant while committing the offence is definitely required to be recovered.

5 Perusal of the First Information Report that has been lodged by one Motilal Ramchandra Gaikwad would show that there was dispute between the present applicant and his family members as well as the informant and his family. It has been contended by Motilal that he wanted to sale his house, but the applicant and his family members were asking it at a very low price. He states that he sold that house to the informant's nephew for more price and when this fact was made known to the applicant, all the accused persons went to the house of informant around 12.00 p.m. to 01.00 p.m. on 01.08.2021. Present applicant had assaulted son of the informant with sword and the blow had hit on the head of informant's son. Thereafter,

even to the informant injury has been caused to the right hand and right ear by the present applicant with the help of sword. Role is attributed to other co-accused and then it is stated that when the offence was committed with an intention to kill, Section 307 and other Sections have been attracted.

6 No doubt, it appears that there are offences against the informant and his family members but at present we are concerned with the First Information Report which is lodged by the informant against the applicant. The investigation is stated to be complete and charge sheet is filed, but as regards the present applicant is concerned, it is stated that he is absconding. Section 299 of the Code of Criminal Procedure has been invoked as against the present applicant. Though the said Section is enabling Section for recording the evidence, in fact, the Investigating Officer ought to have filed evidence about applicant getting absconding along with the charge sheet itself. But that evidence has been produced by the Investigating Officer along with his affidavit dated 19.01.2022. It is to be noted that in reply to the Investigating Officer's letter the bank, with which the applicant is serving, has given a reply that he is absent from his work since 02.08.2021. Further, voluminous general diary details of various dates would make it clear that police were searching the applicant, but he could not be found. Notice has been given to one Sushil Shivaji Jadhav, Dashrath Shrirang Jadhav, Baban

Ram Gaikwad and Prabhakar Baburao Jadhav on 05.12.2021 by the Investigating Officer, informing them that they should produce the present applicant before the Investigating Officer. Those notices have been served on those persons. Thus, when there is evidence available with the Investigating Officer to show that the applicant was absconding and the applicant is not giving any evidence to state that he was not absconding but was present and could have been nabbed by the police; extraordinary powers of pre-arrest bail cannot be granted in favour of an absconding accused.

7 As regards the merits also, when he is stated to have used sword, that too, for causing injury to the head, then, definitely, the recovery of weapon is contemplated. The medical certificate of Arun would show that he had sustained three injuries; first is, on the left elbow i.e. fracture to the left forearm, second is, Contused Lacerated Wound to head in mid parietal region, however, that is simple and to the left leg is simple. For Motilal, there were were three injuries, two are grievous and one is simple. The applicant is stated to have caused those injuries with the help of sword. Therefore, taking into consideration these factual aspects, application deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)