

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1532 OF 2021

MANOJ DEVICHAND MUNOT
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Z.H. Farooqui, Advocate for the applicant

Mr. V.M. Kagne, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1552 OF 2021

Dr. VIJAY DEVICHAND MUNOT
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. A.D. Ostwal, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 14th JANUARY, 2022

PRONOUNCED ON : 09th FEBRUARY, 2022

ORDER :

1 Both the applicants are apprehending their arrest in connection

with the offences registered against each other. For the sake of convenience these two matters are taken up together and the applicants are addressed by their first name.

2 Applicants in both the cases are real brothers. Manoj is a businessman, running a shop of cattle feed under the name 'Govardhan Pashu Khadya'. His shop is on the ground floor and he and his family resides on the first floor. Applicant Dr. Vijay is a medical practitioner and his hospital by name 'Sanjivani Hospital' is situated behind the shop belonging to Manoj. There is a road near the godown, which is adjacent to the shop of Manoj and the said road besides the godown goes to the hospital of Dr. Vijay.

3 Manoj is apprehending his arrest in connection with Crime No.804/2021 dated 22.11.2021 registered with Shrigonda Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 324, 504, 506 of the Indian Penal Code, 1860 and the said offence has been lodged on the basis of First Information Report lodged by Dr. Vijay. Dr. Vijay is apprehending his arrest in connection with Crime No.787/2021 dated 17.11.2021 registered with same Police Station, for the offence punishable under Section 307, 504, 506 of the Indian Penal Code, 1860, which has been lodged on the basis of First Information Report lodged by Pratik Munot i.e.

son of applicant Manoj.

4 Heard learned Advocate Mr. Z.H. Farooqui for the applicant and learned APP Mr. V.M. Kagne for the respondent in Anticipatory Bail Application No.1532 of 2021 and learned Advocate Mr. A.D. Ostwal for the applicant and learned APP Mr. A.M. Phule for the respondent in Anticipatory Bail Application No.1552 of 2021.

5 **Anticipatory Bail Application No.1532 of 2021 :**

It has been vehemently submitted by learned Advocate Mr. Z.H. Farooqui appearing for the applicant Manoj that the applicant has been falsely implicated. In fact, the applicant himself has sustained bullet injuries caused by Dr. Vijay. Manoj's son Pratik lodged the report, wherein it is clearly stated that Dr. Vijay used to pick up quarrels. Even on 09.11.2021 after quarreling Dr. Vijay had threatened Manoj by showing his licenced revolver. The incident took place at about 10.00 a.m. on 17.11.2021, when a truck had come to unload the goods to the shop of Manoj and Dr. Vijay got angry after hot exchange of words. Dr. Vijay after going to hospital returned back with revolver and fired Manoj at two times. It was definitely with an intention to commit his murder. One bullet had hit to thigh and other had struck to the stomach of Manoj. In order to escape, the informant Dr. Vijay came with

flimsy, false and frivolous story after much delay. The First Information Report shows that the incident had taken place at about 10.30 a.m. on 17.11.2021, whereas the First Information Report came to be lodged on 22.11.2021 at about 19.41 hours. In order to avoid arrest in the offence wherein he is accused; informant got himself admitted in private hospital by taking advantage of his acquaintances in the medical background. The police had recovered alleged plastic pipe from the spot and there is nothing to be recovered or discovered at the instance of the applicant. Applicant himself was severely injured and he was required to shift to Ruby Hall Clinic, Pune, wherein the bullets were removed from his body. He is still under supervision and observation of the doctors. Treatment papers from Ruby Hall Clinic are produced on record to support that he is still under observation. He is ready to abide by the terms of the bail and his application for anticipatory bail needs to be considered, as the custodial interrogation is not necessary.

6 Learned APP Mr. V.M. Kagne strongly opposed the application and submitted that the alleged delay in lodging the First Information Report cannot be considered at this stage. The prosecution will have to explain it at the time of trial. The documents which have been collected show that immediately the informant had got himself checked with Pyramid Hospital,

Daund, Pune and the injury certificate issued by that hospital would show that he had sustained seven injuries. The injuries are stated to be grievous and apart from that the photographs of the injured-informant would show that he had received injury to his head. When the real brothers' dispute has gone to such level that they want to kill each other, then, definitely, taking into consideration the seriousness of the offence, applicant does not deserve sympathy, on the ground that he had sustained bullet injuries. Statements of the witnesses recorded in this case would show that the present applicant was the first to assault the informant and thereafter the informant had opened fire. He submitted that the application be rejected.

7 **Anticipatory Bail Application No.1552 of 2021 :**

It has been submitted on behalf of the applicant Dr. Vijay that the contents of the First Information Report also would show that the applicant had gone to request that the truck that was parked on the road going towards hospital to be taken aside, as it is causing hindrance to his patients; yet, Manoj started quarreling with the applicant. Even if we consider the allegations as it is, no case under Section 307 of the Indian Penal Code can be said to have been made out against the applicant. The basic ingredients of the said offence "intention" and "motive" are missing in the First Information

Report. Nothing is to be recovered or discovered at the instance of the applicant as the revolver is already seized by the police. In fact, the conduct of the applicant in immediately going to the Police Station and handing over the revolver demonstrates that he is not a criminal. In fact, whatever he has done was in the exercise of his right of private defence. Those bullets were fired randomly, which unfortunately had hit Manoj, but not on the vital part. The brothers are having a sister also and dispute is going on in respect of partition of ancestral property since last four or more years. There were earlier attempts to settle the dispute amicably and fresh dispute had arisen on the point of appointment of Arbitrator. In the right of private defence the applicant had fired the bullets. The revolver which he is having is of six bore (chamber) and there were in all four bullets in the same. Out of six bullets two were fired and applicant has handed over the rest of the four bullets to police. Section 307 of the Indian Penal Code has been added just to pressurize the applicant to have amicable settlement. Learned Advocate appearing for the applicant has relied on **Darshan Singh vs. State of Punjab and another, (2010) 2 SCC 333**, wherein the principles of right of private defence have been summarized.

“The following principles regarding right of private defence emerge :

- (i) Self-preservation is the basic human instinct and is duly

recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

It has been further submitted that the applicant is a heart patient. He has undergone angioplasty in 2014. The applicant is ready to abide by the terms of the bail.

8 The learned APP Mr. A.M. Phule strongly opposed the application and submitted that no doubt the revolver has been seized, which was produced by the applicant, that does not mean that the applicant should be granted anticipatory bail, on the ground that nothing is required to be seized at his instance. The revolver appears to have been procured by the applicant for self defence, but it can be used only in extreme circumstances, not against his real brother. As per the First Information Report, the applicant was the person, who used to pick up the quarrels and on the day of incident when the Truck was unloading the goods for Manoj, present applicant took objection. Informant says that his father Manoj told applicant that he would remove the Truck after its unloading is over, however, the applicant was not ready to wait for that moment also and he went inside his hospital and brought revolver.

He then fired two bullets. Fortunately, none of them had caused injury to the vital organ like heart or head and, therefore, Manoj could survive. But one of the bullets had hit his thigh and another in the stomach. In spite of this extreme incident, Manoj's son Pratik lodged the report immediately with the police. Statements of witnesses would show that it was the present applicant who had started the quarrel and, therefore, he cannot say that he has a right of private defence. The medical report of the victim would support the fact that he received two bullet injuries and, therefore, taking into consideration the seriousness of the offence the physical custody of the applicant is required for the purpose of investigation and this cannot be considered as a fit case, where the extraordinary powers for releasing a person on anticipatory bail can be exercised.

9 Perusal of both the First Information Reports and the contentions raised by both the parties would show that incident around 10.30 a.m. on 17.11.2021 had taken place near the shop of Manoj, however, both of them have their own different stories. We cannot consider those stories together as such. But it is to be noted that the applicant Dr. Vijay is admitting that he has fired two shots from his licenced revolver. Applicant Manoj is totally silent in respect of the injuries those were on the person of Dr. Vijay. Rather he comes with a case that it is exaggeration and with the help of his friends in the

medical field Dr. Vijay has managed to get medical certificate and got himself admitted. However, the photographs, those have been collected by the Investigating Officer that Dr. Vijay sustained the injuries, are not allowing this Court to have that kind of inference that it is the exaggeration and with the help of friends in the medical field the certificate has been procured. Both the cases show that the applicants therein had sustained injuries. The question would be, as to who had assaulted whom, it would be the matter of the trial.

10 Learned Advocate Mr. A.D. Ostwal, representing Dr. Vijay, was very much harping upon the right of private defence and in that connection he relied upon **Darshan Singh** (supra). The law summarized in respect of right of private defence in the said decision by the Hon'ble Apex Court cannot be denied, however, the first and the foremost fact is that all those observations were made in appeal, that means, the entire evidence was before the Apex Court. Even for right of private defence even prima facie statement can be made that Dr. Vijay will have to accept that he had fired shots from the revolver and accordingly, it appears that he is admitting the same, because he had produced the revolver along with the unused bullets before the police. Now, he is on the point that there was no intention on the part of Dr. Vijay that he would kill Manoj. Motive is always hidden in the

heart of an accused and it can be gathered from the circumstances also. If we consider the statement of informant Pratik and the statements of witnesses in Crime No.787/2021, then, it can be seen that all of them have stated that after hot altercations by saying it to Manoj that he should stay at that place and he would show (तू इथेच थांब, तुला आज दाखवतोच काय ते) Dr. Vijay went inside the hospital and returned to the place and thereafter he had fired those two shots. Whether, under such circumstance, this would amount to exercising right of private defence, is a question. The basic law can also be summarized that the right of private defence is available to the extent which should be proportionate to the danger. If we consider it for the sake of arguments that Manoj had assaulted Dr. Vijay first in time and he had sustained injuries to his head, as seen in the photographs, then, whether Dr. Vijay would go to hospital and come back with revolver, is a question. In his application, Dr. Vijay is not stating that he usually move by keeping the said revolver on his person i.e. may be in his pocket of the shirt or pant and as Manoj has assaulted him immediately, he took out that revolver and fired two shots. Therefore, all these are the matter of evidence but the fact remains that Dr. Vijay had fired two shots, out of one had hit the thigh of Manoj and another in his stomach. Those bullets were required to be removed after operation. Therefore, taking into consideration the seriousness of the offence, this is not a fit case where the extraordinary powers of this Court should be exercised in

favour of Dr. Vijay. As regards his heart problem, the angioplasty appears to have been done in 2014. He has not produced on record that he has suffered any further deterioration. Therefore, that element cannot be considered.

11 Now, as regards the application filed by Manoj is concerned, as aforesaid, taking into consideration the statements of witnesses recorded in Crime No.804/2021 it does not appear that Dr. Vijay had not sustained any injury in the incident. Neighbouring witnesses have also stated that Dr. Vijay had sustained severe injury to his head and he was taken by Bandu Jagtap and Dr. Balasaheb Pawar to Shrigonda Police Station first and then he was referred to Shrigonda Rural Hospital. He was given preliminary treatment and was referred further. Thereafter he got himself admitted to Pyramid Hospital, Daund. No doubt, the FIR lodged by Dr. Vijay appears to be a delayed FIR. Delay can be explained by the prosecution at the time of trial. There are statements of the employees of the hospital of Dr. Vijay and also the statement of Dr. Balasaheb Pawar, who has his own hospital by name 'Pawar Hospital and Skin Clinic' adjacent to the hospital of Dr. Vijay. As aforesaid, he and Bandu Jagtap had taken to Dr. Vijay to Police Station first and then Dr. Vijay has admitted to Pyramid Hospital and till that moment they were with Dr. Vijay. They have stated that Manoj had assaulted Dr. Vijay with UPVC pipe. The assault was on the head, which is vital part of the body.

Though that pipe has been seized from the spot, it is not the only criterion to grant anticipatory bail. Seriousness of the offence and the circumstances, under which the offence has been committed, are also required to be considered. No doubt, as regards Manoj is concerned, it appears that he has taken long treatment at Ruby Hall Clinic, but, now, he has been discharged. His custodial interrogation is, therefore, definitely necessary.

12 It will not be out of place to mention here that oral submissions were made that since the applicants are real brothers, they would take a chance to settle the dispute and may go for quashing of the First Information Reports. This ground cannot be considered as offence punishable under Section 307 of the Indian Penal Code is non compoundable and it would be in the discretion of this Court to quash the FIR, if the case is within the parameters. The thing which has not happened uptill now cannot be considered to grant any relief. Even though the applicants are real brothers, they have acted in such a manner that they would have killed each other. Now, the brotherhood will not help them to get any relief under Section 438 of the Code of Criminal Procedure. Both the applications stand rejected.

(Smt. Vibha Kankanwadi, J.)

Date : 09.02.2022.

Later on :

13 After the pronouncement of the order, the learned Advocates appearing for the applicants submit that the interim protection was granted to the applicants and it should be continued for a period of four weeks. Learned APPs are opposing the same in view of the rejection of the applications. As aforesaid, the applicants were apprehending their arrest in connection with the offences punishable under Section 307, 324, 504, 506 of the Indian Penal Code. This Court has come to the conclusion that the custodial interrogation of the applicants is necessary. However, now the applicants intend to approach the Hon'ble Supreme Court and in order to facilitate them, the interim protection, granted earlier, is extended by two weeks from today.

(Smt. Vibha Kankanwadi, J.)

agd