

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1598 OF 2021

AVINASH S/O SHIVAJI KHANDAGALE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Mr. P. P. Mandlik h/f Mr. A. S. Gandhi, Advocate for the applicant.
Mr. N. T. Bhagat, APP for the respondents – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 07.01.2022

Pronounced on : 31.01.2022

ORDER :-

1. Present applicant is apprehending his arrest in connection with Crime No.66 of 2021 registered with Sonai Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 324, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. P. P. Mandlik h/f Mr. A. S. Gandhi for the applicant and learned APP Mr. N. T. Bhagat for the respondents – State.

3. It has been vehemently submitted on behalf of the applicant that the present applicant is an educated person and completed his M.C.A. He is serving at Real Software, Fursungi SP Info City. Dist. Pune. Though

his native place is Wanjoli, Tq. Newasa, Sonai, Dist. Ahmednagar, but he ordinarily resides at Pune. The applicant has tendered copy of his appointment letter and also his account statement from HSBC Bank. It shows that he is residing and working in Pune District. The informant has falsely involved the applicant as there is civil dispute going on between the families. The applicant is earning handsome salary and his name is implicated with ill intention that he should lose his job. Applicant is aged 25 years and he is also preparing for competitive exam. Co-accused have been arrested and released on bail. The weapons allegedly used in the commission of the crime have already been seized. In fact, the injuries inflicted by the applicant as alleged in the FIR does not match with the injury that has been shown to be present on the person of the informant. The investigation is almost complete and, therefore, custodial interrogation of the applicant is not necessary. The applicant is ready to abide by the terms of the bail.

4. Learned APP strongly opposes the application and submitted that the FIR that has been lodged on 21.02.2021 is, in fact, in respect of incident that had taken place at about 10.30 a.m. on 19.02.2021. The present applicant along with the co-accused had come armed with weapons like scythe and axe. Accused Karbhari Ankush Khandagale had caught hold of the husband of the informant and then by instigating co-

accused, accused Satish had given blow of axe in order to kill Sanjay. That assault caused injury in the middle of the head of Sanjay. Present applicant had used scythe and caused injury to the left leg of Sanjay causing him fracture. Accused Shivaji had assaulted Sanjay on his chest and back with the help of wooden log. Her husband was initially taken to Ahmednagar Civil Hospital and then shifted to Nobel Hospital, Ahmednagar. The doctor had given information to Tophkhana Police Station, but Sanjay was unconscious and ultimately, his wife has lodged the report. This shows that the applicant has used dangerous weapon like scythe. The police papers would further show that the injury certificate of Sanjay would show that there was tibia fracture left and the injury was grievous, so also head injury was also grievous. Co-accused have been arrested and certain weapons have been seized i.e. scythe, axe and wooden log. Now, as regards the present applicant is concerned, there is *prima facie* evidence against the applicant. His name has been stated by the eye witnesses also, as the person who had assaulted Sanjay with scythe. Further, most important fact is that many times police had tried to arrest the present applicant, but his whereabouts were not known. Standing warrant as per Section 70 of the Code of Criminal Procedure has been issued by learned Judicial Magistrate First Class, Newasa by order dated 17.12.2021. Therefore, a

competent Court, at this stage, had come to the conclusion that the present applicant is absconding in order to avoid arrest. Under such circumstance, the applicant does not deserve sympathy and the extraordinary relief of anticipatory bail.

5. At the outset, it is to be noted that though the applicant had given his address in the application that of Fursungi, Hadapsar, Dist. Pune, he has not given his complete address, in a sense the flat number was not mentioned. When the applicant was directed to produce certain documents, photocopy of the Aadhar Card is tendered, which shows his address as Wanjoli, Ahmednagar, Maharashtra. Copy of the appointment letter has been produced which has been issued by Ernst and Young LLP, but it is dated 06.01.2022 and even the account of the HSBC bank appears to be opened after November, 2021. We are concerned with the incident dated 19.02.2021 and, therefore, it cannot be stated, on the strength of documents those have been produced by the applicant, that on the date of incident, he was in Pune. Rather the police papers would show that the contents of the statement of the informant are supported by the eye witnesses. Specific role is attributed to the applicant. It is stated that he had caused fracture to the left leg by means of scythe. The injury certificate also stated about the fracture to tibia left. No doubt, independently it would disclose the offence under Section 324 of

Indian Penal Code, however, the co-accused, who was present at that time i.e. Satish Khandagale, had given blow of axe in the middle of the head of Sanjay. Sanjay's own statement has also been recorded. Definitely, head is a vital part of the body. That injury would certainly *prima facie* attract Section 307 of Indian Penal Code. When all the accused persons had come armed, *prima facie* we may take that it was with a common intention. Statements of eye witnesses support the contents of the FIR as well as the statement of the injured and the injury certificate. Statements of certain witnesses have also been recorded under Section 164 of the Code of Criminal Procedure.

6. What is against present applicant is the certificate dated 07.12.2021 issued by the Police Patil, Wanjoli, Tq. Newasa, Dist. Ahmednagar certifying that since 19.02.2021, the present applicant has not come to village Wanjoli and he cannot be traced at his house or the nearby vicinity. Thereafter, it can be seen that the investigating officer had prayed for issuance of warrant under Section 70 of the Code of Criminal Procedure against the present applicant and the learned Judicial Magistrate First Class, Newasa by order dated 17.12.2021, has issued non bailable warrant against the present applicant. This Court will not help a person, who is absconding and there appears to be a *prima facie* evidence to support the prosecution that the present

applicant is absconding. Under such circumstance, no case is made out to exercise the extraordinary powers of this Court under Section 438 of the Code of Criminal Procedure for releasing the applicant. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm