

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.712 OF 2022

Umesh Jafar Pawar

...Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Vikrant Phatate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 16 MARCH 2022

P.C.

1. The Applicant, apprehending arrest, in connection with the investigation of Crime No.144 of 2020 registered with Umadi Police Station, Sangli, under Section 302, 120B read with Section 34 of the Indian Penal Code is seeking anticipatory bail.

2. Heard learned counsel for the parties.

3. The investigation in this case is complete and the charge-sheet is filed. The Applicant is shown to be accused No.2 in the charge-sheet.

3. The case is based on circumstantial evidence. In a memorandum panchnamma dated 28 July 2020 under Section 27 of the Evidence Act the co-accused Ganpati @ Ganesh Hugar

(At page No.102 of the compilation) has shown the spot of the incident. Except the said panchanama there is no material against the present Applicant, as the co-accused Ganpati @ Ganesh has taken the name of the present Applicant. Firstly, there is a serious doubt whether mere showing of the spot of the incident (without discovery of any incriminating article which can be said to be fact discovered) the panchnamma would have any probative value. Secondly even assuming that the panchnamm can stand the test of Section 27 of the Evidence Act, whether any incriminating part, that too about the co-accused can be considered as evidence. Admittedly, there is no recovery of any incriminating article from or at the instance of the Applicant.

4. Apart from the memorandum under Section 27 of the Evidence Act, the learned Additional Public Prosecutor points out that there is Call Data Record (CDR) showing that the Applicant was in contact with the co-accused around the time of the incident.

5. Mere presence at or near the spot of incident or its vicinity, or being in contact with the co-accused cannot *prima facie* be taken into consideration at this stage, in the absence of any other incriminating circumstances.

6. In such circumstances, the following order is passed.

ORDER

(i) In the event of his arrest in connection with investigation of Crime No.144 of 2020 registered with Umadi Police Station, Sangli, the applicant- Umesh Jafar Pawar, shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall report to the Investigating Officer on 21 and 22 March 2022 between 11.00 am to 1.00 p.m. and as and when called by the investigating officer and shall co-operate with the Investigating Agency.

(iii) The Applicant shall surrender his mobile phone, if required, by the Investigating Officer.

(iv) It is made clear that the observations herein are only for the purpose of deciding the Application for anticipatory bail and learned Sessions Court shall not be influenced by the same at the trial.

(v) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.