

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2498 OF 2021

Nandkumar Bhiva Kare

...Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Umesh R. Mankapure for the Applicant.

Mr.N.B. Patil, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 25 MARCH 2022

P.C.

. The Applicant, apprehending arrest, in connection with the investigation of Crime No.195 of 2021 registered with Umadi Police Station, under Section 364, 307, 395, 397 of Indian Penal Code, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 30 August 2021 lodged by Jagnath Jagtap. According to the informant on 29 August 2021 the Applicant and the co-accused had assaulted his brother Murlidhar Jagtap at Zende Vasti, Zilla Parishad School, Taluka-Jath, District-Sangli.

3. A perusal of the FIR shows that the injured was further carried by the Applicant and the co-accused to a nearby forest where he was again assaulted. Insofar as the Applicant is concerned the allegation is that he had assaulted the injured by a knife on the legs above the knee. On the basis of such a complaint an offence came to be registered and after investigation a charge-sheet is filed. In this case some of the accused are already arrested.

4. I have heard the learned counsel for the applicant and the learned Additional Public Prosecutor.

5. The learned counsel for the Applicant strenuously urged that the informant is a brother of a political leader against whom the Applicant has filed a complaint. He therefore, submits that there is a political rivalry between the Applicant, and the informant and his brother which has given rise to the complaint.

6. The learned counsel for the Applicant has placed strong reliance on a certificate issued by the Covid detection Center at Rural Hospital, Jath, District-Sangli which shows that on 29 August 2021 at 3.00 p.m. the Applicant had gone to the Rural Hospital for testing and he had tested negative for Covid-19 infection. He submits that the Applicant subsequently traveled to Sangli for conduction of an RTPCR test. He pointed

out that the distance between the spot of the incident and Jath/Sangli is about 60/90 Kilometers respectively. He pointed out that the incident is alleged to have happened at 3.00 p.m. His presence is improbable, on account of the fact that the Applicant had gone to the Rural Hospital at Jath and thereafter at Sangli for conducting the tests.

7. The Applicant is relying on the plea of alibi. The Applicant has made an application to the Magistrate for calling CCTV footage of the Rural Hospital on 8 September 2021 on which the Magistrate had called for the report of the APP/Investigating Officer which is not furnished. Thus in the submission of the learned counsel the Investigating Officer without conducting the investigation in the matter of the plea of alibi has filed a charge-sheet. He submitted that the custodial interrogation of the Applicant is not necessary.

8. The learned counsel has placed reliance on the decision of the Supreme Court in the case of ***Ram Lal Narang V/s. State (Delhi Administration)***¹, in order to submit that the Investigating Officer is required to examine the plea of alibi wherever raised.

9. The learned Additional Public Prosecutor submitted that the FIR as well as the statement of the witnesses show that

1 (1979) 2 Supreme Court Cases 322

the Applicant was present at the spot of the incident and there is an allegation of assault by knife on the legs of the informant. He therefore, submitted that *prima facie* the contention based on the plea of alibi cannot be considered at least at the stage of the consideration of the Application for pre arrest bail.

10. It is submitted that the Applicant has Criminal antecedents against him as he is facing prosecution in as many as nine cases in similar offences. Apart from that he is a history sheeter against whom chapter proceedings as well as proceedings for extradition are also initiated.

11. I have considered the rival circumstances, and the submissions made. A bare perusal of the FIR shows that the Applicant was allegedly present on the spot at 3.00 p.m. and there is specific allegation of the assault by knife on the legs of the injured which is attributable to the present Applicant.

12. The Applicant has relied on the plea of alibi. It is well settled that a defence of alibi has to be established by the accused at the trial. In other words burden to prove such a plea is on the accused.

13. In my considered view, in the absence of a verified material the plea of alibi cannot *prima facie* be accepted at this

stage. Reliance placed on the decision of the Supreme Court in *Ram Lal Naragn* in my humble opinion is misplaced as the said case is clearly distinguishable on facts.

14. Looking to the overall circumstances, and the Criminal antecedents against the Applicant, no case for grant of pre-arrest bail is made out. The Application stands rejected.

15. The observations herein are only for the limited purpose of deciding the Application for pre arrest bail and the learned Sessions Judge shall not be influenced by the same at any subsequent stage of consideration of an Application for regular bail, if any.

C.V. BHADANG, J.