

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.435 OF 2020**

Chetan Hanumant Dhotre ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Nitesh Mohite i/by Mr. Satyavrat Joshi, for Applicant.
Mr. Y.Y.Dabake, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 21st JUNE, 2022

P.C.

1. This is an application for anticipatory bail in connection with C.R.No.150 of 2019 registered with Bhosari Police Station for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of the Indian Penal Code, 1860 and Section 4 read with Section 25 of the Arms Act, 1959 and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, 1951 .

2. The prosecution case runs as under :

2.1 Aniket, the first informant, is a nephew of Sunil Aarade (the deceased). On 4th February, 2019 at about 10.00 p.m. the deceased called the first informant on cell phone and asked him to come to Bopodi as the deceased had an altercation with the boys from the group of Ravi Manjrekar, who was running an illegal gambling den at Dapodi. The first informant came towards Bhopodi along with his friends Kiran, Salman and Reynold. The deceased met them on the way and asked them to proceed

towards Dapodi. The deceased went ahead alone, on an Active moped. The first informant noticed that some boys accosted the deceased. Mr. Ravi Manjrekar and his associates including the Applicant – Chetan Dhotre, were arguing with the deceased. Noticing the first informant and his friends, Ravi Manjrekar and his associates and the Applicant went away. They, however, returned immediately armed with weapons. Mr. Ravi Manjrekar and Hrishikesh Dhotre were armed with scythe. Mr. Rajesh Manjrekar and Sandeep Jadhav were armed with wooden log. Ravi Manjrekar and the Applicant caught hold of the deceased. Ravi Manjrekar assaulted the deceased by means of scythe on the left leg. Thereafter, Rohit Manjrekar, Rajesh Manjrekar and Hrishikesh Dhotre gave blows by means of cement block, stone and wooden log. When the first informant went to rescue, Rohit Manjrekar gave a blow by means of cement pipe on his head. His friends Salman and Reynold were assaulted by the Applicant – Chetan Dhotre and others. The deceased succumbed to the injuries.

2.2 Apprehending arrest, the Applicant preferred an Application seeking pre-arrest bail. By an order dated 27th February, 2020, this Court directed that the Applicant shall not be arrested till 5th March, 2020. The said interim protection has since been continued.

3. The learned Counsel for the Applicant submitted that the Applicant was not at all named as the person who was a member of the alleged unlawful assembly and participated in the assault on the deceased and the first informant. The name of the

Applicant surfaced for the first time after about more than two months, in the supplementary statement of the first informant – Aniket. The said omission on the part of the first informant to name the Applicant as one of the persons who took an active part in assaulting the deceased and the first informant, betrays the intent to falsely rope in the Applicant.

4. To this end, attention of the Court was invited to the FIR lodged by the first informant on 5th February, 2019. In the FIR, after narrating the events upto the point of altercation between the deceased and the boys of Ravi Manjrekar, the first informant alleged that 10-12 persons armed with scythe and sticks, charged upon them. He and his friends tried to push them back. He was assaulted by means of scythe on his ear, legs and back. Seven to eight from out of the assailants assaulted the deceased. Those persons were in the age group of 20-30 years. He can identify the assailants if again shown.

5. Evidently, the first informant initially neither disclosed about the presence of the Applicant as a member of the alleged unlawful assembly, nor any overt act was attributed to the Applicant. In the supplementary statement, the first informant named the Applicant as one of the assailants. The said statement was recorded on 15th April, 2019. This delay of more than two months, especially in the context of the fact that the first informant did not claim that he had not known the Applicant from before, is of material significance.

6. It is in the aforesaid context that in the case of Gurudatta manohar Jadhav V/s. The State of Maharashtra¹ this Court was persuaded to grant bail. The observations of the Court in paragraphs 8 to 10 read as under :

“8. The informant’s case that more than 10 to 12 persons had assaulted the deceased does not appear to be true in the light of the fact that there were four injuries suffered by the deceased, out of which, three were on the head. Significantly, the first informant has not named the applicant in the FIR. But surprisingly he has specifically named the Applicant in his supplementary statement recorded on 15th April, 2019 i.e. after more than two months. Even in that statement, he has stated that Ravi Manjrekar had assaulted the deceased on his left foot with a sickle. Thereafter, Rohit Manjrekar, Rajesh Manjrekar, Rushikesh Dhotre had assaulted the deceased with stones, sticks and cement blocks.

9. The Applicant is attributed role along with others of assault mounted on Salman and Renold. However, their injury certificates are not included in the charge sheet. Therefore, there is no corroboration to that part of his statement. He has not explained in his supplementary statement as to why the applicant’s name did not feature in the FIR if he was knowing him by name.

10. Besides this, there is a statement of one Ranjit Gaikwad, who is the grand father of the applicant. He has stated that he has seen the fight between the deceased and Ravi. He himself, present applicant, Ganesh Gaikwad, Monty Yadav and Sunny Khandgale tried to intervene in the fight to save the deceased. His statement shows that the fight was between the deceased and Ravi, the Applicant had in fact tried to save the deceased. However, this witness is grand father of the applicant. The evidentiary value of his evidence will have to be tested during trial. At this stage, the charge sheet contains the statements of these two main eye witnesses. Besides these two, the police have recorded the statements of Salman and

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Renold. They have simply stated that about 10 to 12 persons had caused the assault. They have not named anybody else except Ravi Manjrekar and Rushikesh Dhotre. They have also not identified the Applicant in the test identification parade. Hence, there is hardly any evidence against the present applicant except the supplementary statement of the first informant which appears to be doubtful. In view view of the matter, the applicant deserves to be released on bail.”

7. It would be contextually relevant to note that Salman and Reynold, the friends of the first informant, who were allegedly present and attempted to rescue the deceased and were also assaulted by the assailants, gave a version which corresponds with the version of the first informant. Salman and Reynold did not name the Applicant as one of the members of the unlawful assembly and the person who assaulted the deceased. In fact, Salman and Reynold claimed that they fled away from the scene of occurrence as the assailants attempted to assault them as well. None of them claimed to have sustained any injury.

8. In the aforesaid view of the matter, when the role of holding the deceased is attributed to the Applicant and the presence of the Applicant at the scene of occurrence, is rendered in the corridor of uncertainty, if the version of the first informant in the FIR is considered, the custodial interrogation of the Applicant for an effective investigation does not seem warranted. Even otherwise, it is not the case that the Applicant was armed with weapon. Thus, the aspect of custody of the Applicant so as to facilitate the recovery of weapon or any other incriminating article,

also does not arise.

9. The investigation is complete for all intent and purpose. Charge sheet has also been lodged. As the interim protection is in operation since 27th February, 2020, at this length of time, I am persuaded to exercise the discretion in favour of the Applicant. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) In the event of the arrest of the Applicant – Chetan Hanumant Dhotre in C.R.No.150 of 2019 registered with Bhosari Police Station for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of the Indian Penal Code, 1860 and Section 4 read with Section 25 of the Arms Act, 1959 and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, 1951, he be released on bail on furnishing a PR bond in the sum of Rs.25,000/- and one or two sureties in the like amount.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The Applicant shall furnish his permanent residential address and contact details to the Investigation Officer.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional court.

(vi) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

(N.J.JAMADAR, J.)