

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1316 OF 2022

Sheravali Ramjan Shaikh and Anr.

.. Applicants

Versus

The State of Maharashtra and Anr.

.. Respondents

.....

- Mr. Satish Ghorpade i/by Mr. Vishal Deshmukh for the Applicants
- Ms. P.P.Shinde, APP for the State
- Mr. Satish Jagdale, API – Kasturbha Marg Police Station, Mumbai

.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 17, 2022.
(Vacation Court)

P.C.:

1. Heard.

2. The present application has been filed by the Applicants for seeking anticipatory bail as they apprehend that they shall be arrested in respect of Crime No. 477 of 2022 registered with the Kasturbha Marg Police Station, Mumbai for the offences punishable under Sections 307, 326, 504, 506 readwith 34 of the Indian Penal Code, 1860 (“IPC”).

3. The FIR is filed on 14.04. 2022 i.e. on the date of the incident. The first informant is a truck driver. It is alleged that on 13.04.2022 at about 6:00 pm the first informant parked his truck outside the FCI

(Food Corporation of India) godown. The Applicants approached him, threatened him for parking his truck and beat him up. Thereafter on the following date i.e. on 14.04.2022 at about 3:30 p.m. the first informant once again on the instructions of his master visited the FCI godown and parked his truck outside the godown. At that time the Applicants abused the first informant and threatened to kill him. The Applicant No.1 assaulted him with a sharp edged weapon and Applicant No.2 assaulted him with an iron rod. The first informant sustained injuries and was taken by his friend Sharukh Pathan to Babasaheb Ambedkar Hospital, Kandivali for medical treatment. After taking medical treatment the report was lodged with the Kasturbha Marg Police Station. When the report was lodged offences under Section 326, 504, 506 readwith 34 IPC were registered, however, subsequently Section 307 IPC i.e. attempt to murder was added.

4. Mr. Ghorpade, learned counsel appearing for the Applicants submits that the Applicants have been falsely framed by the prosecution. He submits that the offence under Section 307 is a very serious offence which is alleged by the prosecution. He submits that though it is alleged that the assault was by means of a sharpe edge weapon and iron rod by both the Applicants, the weapons have not been recovered by the Investigating Officer and most importantly the medical evidence placed on record militates against the prosecution's

case. He submits that though it is further alleged that on the previous evening before the incident date i.e. on 13.04.2022 there was another incident about the Applicants alleged to have beaten the first informant, no report or complaint has been lodged by the first informant. He submits that, in fact in the said incident which had occurred on the previous day, the Applicants had sustained injuries because of the skirmish with the first informant and others. He submits that the first informant and the Applicants are all truck drivers who visit the FCI godown for transportation of wheat and rice from the said godown and there exists enmity and acrimony between various groups of drivers. He submits that the incident has been unnecessarily borne out of proportion by the prosecution by alleging that weapons were used by the Applicants, when in fact there has been no recovery of the weapons. He submits that the charge of Section 307 has been subsequently added, however the same is unsustainable in view of the medical evidence.

5. Ms. Shinde, learned APP submits that the ocular evidence of the eye witness has been recorded in the present case by the Investigating Officer. The two eye witnesses have stated that the Applicants assaulted the first informant by using sharp edged weapon and iron rod and thus it cannot be said that the Applicants have been falsely implicated in the present case.

6. Incidentally the investigation is in progress in the present case. The weapons which are used or alleged to have been used by the Applicants have not been recovered yet. Learned APP has placed before the Court the medical evidence which is the injury report recorded by the Doctor from Babasaheb Ambedkar Hospital, Kandivali, Mumbai. Perusal of the medical report shows that on the statement of the first informant it is noted that the assault was came by 4 people by sword. However the description of the main injury is a Contused Lacerated Wound (CLW) over the frontal region admeasuring 3 X 1 X 1 cm with a sharp weapon but has been classified as a simple injury. The remaining 2 injuries stated in the medical report need to be prima facie discounted as they are an abrasion of 1 X 0.5 cm on the right calf and a contusion on the right hand, both being classified as simple injuries. I have also perused the statement of the eye witnesses recorded by the Investigating Officer on 15.04.2022. Mr. Shahrukh Pathan, the eye witness, friend of the first informant in his statement states that he alongwith the first informant, Akhtar Shaikh, Shamim Shaikh, Amit Gupta and Shahid Shaikh were present at around 3:30 p.m. when the Applicants approached the first informant and beat him up and all those present attempted to resolve the altercation and separated them. In his statement the witness states that the Applicant No.1 had a sharp weapon whereas the Applicant No.2 had an iron rod with them. Similarly the statement of Mohammad A. Shaikh another

eye witness to the incident also states that the Applicant No.1 had a sharp edged weapon and the Applicant No.2 had an iron rod with them. The statement of the first informant recorded on 15.04.2022 also states that Applicant No.2 had a sharp edged weapon in his hand whereas Applicant No.2 had a rod. None of the statements reveal that the Applicant No.1 was carrying a sword which is reflected in the history given by the first informant in the injury report.

7. It is seen that there is no specific material placed on record to show that the Applicant had approached the first informant with a premeditated intention to murder him. The Applicants were all known to the first informant as they are all truck drivers doing the same work; further despite this the FIR is filed against the Applicant No.1 and one unknown person, whereas in the statements recorded on the very next day by the first informant and the two eye witnesses it is stated that the Applicant No.2 had accompanied the Applicant No.1 at the time of the incident. Perusal of the FIR also *prima facie* shows that there was no motive or intention to cause the assault, unless something is revealed in the investigation by the Investigating Officer.

8. In view of the above, the custodial interrogation of the Applicants is not required and investigation by the Investigating Officer can be carried out without taking the Applicants in custody. The antecedents

of the Applicants before me are also clean. Hence the following order is passed:-

ORDER

(i) In the event of the arrest of the Applicants in connection with the Crime No. 477 of 2022 registered with Kasturbha Marg Police Station, Mumbai, the Applicants i.e. Applicant No.1 - Sheravali Ramjan Shaikh and Applicant No.2 – Shaher Ramjan Shaikh be released on bail on executing a P.R. bond in the sum of Rs. 25,000/- each with one or more solvent sureties in the like amount;

(ii) Both the Applicants shall report to the Investigating Officer twice a week on Monday and Wednesday between 11:00 a.m. and 1:00 p.m. and/ or as and when required and called by the Investigating Officer and shall co-operate with the Investigating Agency;

(iii) The Applicants shall not tamper with the prosecution evidence / witness;

(iv) In the event of breach of any of the aforesaid condition having been brought to the notice of this Court, the present order shall stand canceled.

9. In view of the above directions, Anticipatory Bail Application stands disposed of.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2022.05.19
14:51:22 +0530