

Uday S. Jagtap

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

ANTICIPATORY BAIL APPLICATION NO. 2166 OF 2022

Sachin Vasantryao Taware
Age : 46 years, Occ. Farmer,
R/at Taware Vasti, Shivaji Nagar,
Malegaon, Tal. Baramati,
Dist. Pune .. Applicant

Vs.

1. The State of Maharashtra
Through Baramati Police Station,
Pune -01
2. Mahesh Uttamrao Paithankar,
Age : 46 years,
R/at Paithnkar Vasti, Shivajinagar,
Tal. Baramati, Dist. Pune .. Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2167 OF 2022**

Nitin Vasantryao Taware .. Applicant
Age : 46 years, Occ. Farmer,
R/at Taware Vasti, Shivaji Nagar,
Malegaon, Tal. Baramati,
Dist. Pune .. Applicant

Vs.

1. The State of Maharashtra
Through Baramati Police Station,
Pune -01
2. Mahesh Uttamrao Paithankar,
Age : 46 years,
R/at Paithnkar Vasti, Shivajinagar,
Tal. Baramati, Dist. Pune .. Respondent

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Mr. Shekhar Jagtap a/w Mr. Mayuresh Ingale, Reha Francis,
Shubham Gade, Sairuchita Choudhary, Padmaja Malegaonkar i/b J.
Shekhar & Co. for the applicant
Mr. Rupesh A. Zade for the first informant
Mrs. P.N. Dabholkar, APP for the respondent – State
Mr. Rahul Ghuge, API, Baramati Taluka Police Station present
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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 11th AUGUST, 2022.
PRONOUNCED ON : 17th AUGUST, 2022

ORAL ORDER :-

1. Applicants are real brothers. Due to their first unsuccessful attempt to secure pre-arrest bail before the Sessions Court, they approached this Court.
2. The first informant and the victim is one Mahesh Paithankar. The applicants and the victims are residents of Shivaji Nagar, Malegaon, Tal. Baramati, Dist. Pune. The incident in question had occurred on 10th July, 2022 at around 7.30 p.m.
3. Allegations as apparent from the First Information Report dated 11th July, 2022 are that when the victim along with one Abhay Chaware and Rajendra Paithankar was taking snacks on account of fast and was about to leave the said shop, all of a sudden, prime accused Swapnil Deulkar rushed to him and inflicted a blow of scythe on his head from the rear side as well as on his back. Due to the sudden assault, victim sustained grievous injuries to his head and back. He fell down. The first information report further reveals that while escaping from the

spot, the assailant Swapnil threatened the first informant that he (victim) should not antagonize the applicants, else, he would eliminate him.

4. Hearing a hue and cry and commotion as well as screams of the victim, witnesses namely Abhay Chaware, Vipul Khaire, Pushkar Nimbalkar and Sunil Jadhav came for his rescue and ultimately admitted him in *Bhagyajai* Hospital, *Baramati*.
5. I heard Mr. Jagtap, learned Counsel for the applicant. Learned APP waives service of notice on behalf of respondent – State. With the consent of the learned Counsel, the application is heard finally.
6. At the outset, learned Counsel for the applicant submitted that the applicants have been implicated only on the basis of so-called confession of the prime accused while he was in police custody which, at this stage, cannot be made admissible in order to involve applicants when they were admittedly not present on the spot. He would argue that *prima facie*, no motive is seen nor the Investigating Agency seeks to recover weapon of offence which has already been recovered at the instance of the prime accused. He would further submit that applicant – Sachin Taware is an Ex-*Sarpanch* of the village. Possibility of his false implication and framing cannot be ruled out in view of the ensuing elections of *Gram Panchayat*.
7. Learned Counsel for the applicants submits that the applicants would abide by any terms and conditions which would be

imposed by this Court in co-operating with the Investigating Officer. He placed reliance on two judgments of the Supreme Court which shall be dealt with in the later part of the order.

8. Learned APP, while strongly opposing the applications, submits that the applicants have been named in the First Information Report by the victim from which prior animosity is apparent. She vehemently submits that the motive behind the assault upon the victim was because of their cross terms with the latter and consequent instigation of Swapnil to attack him.

9. At the outset, it is manifest that the applicants were not present at the scene of occurrence during the incident. Genesis of the crime, as reflected from the remand application, appears to be some incident allegedly occurred 15 to 20 days before, in the field of the applicants, where the assailant had been called to uninstall a motor pump. It is alleged that the applicants, at that time, instigated the assailant – Swapnil to attack the victim. As has been rightly argued by the learned Counsel for the applicants, the so-called confession of Swapnil while in police custody implicating the applicants in this case cannot be considered. The FIR, at the best, would indicate that after the assault, assailant – Swapnil did not say that he had mounted the assault at the behest of the applicants. The omnibus allegation, *prima facie*, from the report is that he threatened not to antagonize the applicants. Whether it was a well hatched conspiracy or whether the applicants had shared a common intention with assailant – Swapnil, would only be surfaced during the course of further investigation.

10. Although, one cannot, at this stage, out-rightly construe it to be a concocted story, yet, overall circumstances and material on record drive me to consider liberty of the applicants, in light of the guidelines enunciated by the Supreme Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra, (1980) 2 SCC 565**.
11. No doubt, offence is grievous and the assailant has already been nabbed by the Investigating Officer, who is in the custody. It is not the case of the prosecution that the applicants have antecedents. Since the applicant – Sachin Taware is said to be an *Ex-Sarpanch*, at this stage, it cannot be presumed that he would flee away from justice, in case, his liberty is protected. From the overall material, at this stage, it is quite difficult to apprehend the exact role of the applicants in this case, more particularly, when the Investigating Officer has invoked Section 34 of the Indian Penal Code.
12. I am mindful of the fact that while considering a prayer for pre-arrest bail, a balance will have to be maintained between the free, fare and full investigation *vis-a-vis* unnecessary harassment of the persons accused in such a serious crime. Adequate precaution and care can be taken to ensure that the investigation would be conducted freely without there being any apprehension of tampering by the applicants. Keeping in mind the well known principles laid down by the Supreme Court in case of **Siddharam Satlingappa Mhetre (supra)**, by imposing certain restrictions and conditions, liberty of the applicants can be protected.

13. Relevant paragraphs of the judgment in the case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, (2020) 5 SCC,1**, are extracted below;

92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified – and ought to impose conditions spelt out in Section 437(3) Cr.PC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.

92.6. *An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*

92.7. *An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.*

92.8 *The observations in Gurbaksh Singh Sibbia V. State of Punjab (1980) 2 SCC 565 regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia had observed that : (SCC p.584, para 19)*

“19. if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhaya, AIR 1960 SC 1125.”

14. In the light of the discussion made hereinabove, following order is expedient :-

ORDER

(i) In the event of arrest of the applicants – Sachin V. Taware and Nitin V. Taware in C.R. No. 387 of 2022 for the offences punishable under Sections 307, 506 and 109 r/w Section 34 of the IPC and under Sections 4 and 25 of the Arms Act, they be enlarged on executing a PR. bond/s in the sum of Rs.50,000/-each with two solvent sureties each in the like amount to the satisfaction of the learned Additional Sessions Judge, Baramati.

(ii) The applicants shall report and attend the concerned police station on every Monday, Wednesday and Friday between 11.00 a.m. and 3.00 p.m.

(iii) The applicants shall furnish their mobile numbers and permanent residential address to the Investigating Officer.

(iv) The applicants shall not leave the jurisdiction of concerned police station until further orders.

(v) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case, including the victim.

(vi) If the applicants commit breach of any of the conditions, the prosecution would be at liberty to seek cancellation of the protection granted.

15. Application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)