

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2191 of 2022

Ajit Pyarelal Gupta .. Applicant
Versus
The State of Maharashtra .. Respondent
...
Mr.Sarthak S. Diwan for the applicant.
Mrs.Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 25th AUGUST, 2022

P.C:-

1 The applicant is apprehending his arrest in connection with C.R.No. 55/2022 registered with Ulhasnagar police station, which invoke Sections 143, 144, 146, 147, 148, 149, 307, 337, 341, 427, 506 of IPC and Sections 4, 25 of Arms Act

2 The complainant is one Ravi Peswani and the FIR implicate the present applicant and his four associates as accused.

Ravi Peswani who runs a snack corner, report to the police station on 3/2/2022 and state that he is acquainted with the applicant who also runs a hotel and there is a business rivalry between them. He state that on 25/1/2022, when he was enroute to Gurudwara, Ulhasnagar from his house, he was chased by an

Access vehicle which was being driven by Pawan Gupta and his associate. It is alleged that Pawan attacked him by means of a sword, but in an attempt to avoid the blow, he kicked his vehicle which fell down and Pawan and his associate also fell down.

The complainant specifically state that he did not report the incident to the police.

He narrates another incident which took place on 1/2/2022 when the complainant and his friend Ritesh were chased by a blue colour Access vehicle on which two unknown persons were found, and this vehicle was followed by one white colour Burgman motorcycle, and the complainant alleged that the applicant was sitting in the middle and was holding a weapon like chopper and even other persons were carrying weapons. Apprehending some danger, he fled away from the spot. At that time, it is alleged that one of the person riding on Burgman motorcycle threw a hammer at them which hit his friend Ritesh on his waist. The complainant state that at that time, he heard Pawan shouting not to spare him by pointing out to him. The statement of the complainant, is to the effect that all the persons had covered their faces by handkerchief and somehow, he escaped from the said place. He gave description of the said persons and specifically named the applicant as one amongst them.

The complainant, in his supplementary statement, recorded on 11/2/2022, however, clarify the role attributed to the present applicant and state that he realized that Pawan Gupta was not amongst the assailants and since the earlier statement given by him was recorded in a confused state of mind. He state that from the police, he came to know the name of the assailants. In the supplementary statement, he state that the applicant has conspired with all the co-accused persons to eliminate him.

3 On the last date of hearing, the learned APP was asked to take instructions about the material collected during investigation, to establish the charge of conspiracy, since the complainant himself had clarified that the applicant was not one of the assailant.

In response, the learned APP has invited my attention to two circumstances, the first being payment of Rs.3,000/- by the present applicant being giving the effect to the conspiracy to eliminate the complainant. In support of the said circumstances, the Investigating Officer has obtained the statement of account of wife of Rohit Punna, the co-accused who participated in the assault on 1/2/2022. The said statement reflect the entry by Google Pay in her account in the name of the applicant on 31/1/2022.

The learned APP has also placed on record the receipt of Google payment which reflect the date as 1/2/2022 and time

as 3.02 a.m.

The above circumstances which is sought to be relied upon however, create a discrepancy as the bank statement reveal that the amount is credited by Google Pay on 31/1/2022, whereas by Google Pay received, gives the date as 1/2/2022 at 3.02 am.

Apart from this, the statement of Saraswati glaringly establish the cause for such payment, when she state that the mobile number on which the payment is received is in her name, but it is used by her husband Rohit and it has facility of Google Pay. She also state that her husband often orders food from the hotel of the applicant.

4 The learned counsel for the applicant would submit that in any case, the amount of Rs.3,000/- cannot be the cost for eliminating him and there were other assailants who participated in the incident and it is unfathomable that for the attack, Rs.3,000/- was paid by the applicant to Rohit.

5 The second circumstance on which the learned APP has placed reliance is the statement of Irshad Ali, one of the employee of the applicant who has referred to an incident dated 25/1/2022 and has established the association between Rohit Punna, Alok Yadav, Sachin Ahire and several other persons by stating that they visit the hotel of his employer at times. He referred to an injury being sustained by Ayaz who was seen limping after he left on the bike of his employer, and the

explanation offered, was that the vehicle had slipped. In any case, since it is not certain as to who was the person accompanying the applicant on the date on which the first incident is alleged to have taken place, since no FIR has been lodged in respect of the said incident, this circumstance by itself cannot be prima facie be said to be sufficient to establish criminal conspiracy.

6 The startling thing in the entire episode is invocation of Section 307 of IPC in the subject crime, and my attention is invited to the injury certificate of the injured Ritesh who has sustained blunt trauma on his right thigh and right hand. When specifically asked about the basis on which Section 307 has been invoked, the learned APP state that since there was a conspiracy hatched to eliminate the complainant and hence, Section 307 has been invoked. The complainant has not sustained any injury and he, in his supplementary statement, has specifically stated that the applicant was not present at the time of the assault.

Prima facie, in absence of any material justifying the invocation of Section 307 IPC and also the alleged attempt to indict the applicant on the basis of Section 120B, prima facie, the case for custodial interrogation, falls to the ground.

The injury sustained by Ritesh are simple injuries and merely because a conspiracy is hatched and which was given effect to, without any life threatening injury caused, it cannot be said that the offence u/s.307 has been committed.

7 In the wake of the aforesaid circumstances, the applicant deserve protection from arrest, but he shall continue to report to the police station and render his co-operation in the investigation. Hence, the following order :

ORDER

- (a) In the event of his arrest, the Applicant – Ajit Pyarelal Gupta in connection of C.R.No.55/2022 registered with Ulhasnagar police station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (c) The Applicant shall report to the police station on 12th to 14th September 2022 between 1.00 pm to 3.00 p.m and thereafter as and when called.

The Application is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)