

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2608 OF 2021**

Gajanan Pandharinath Marne ... Applicant
versus
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.3053 OF 2021**

Gajanan Pandharinath Marne ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Shailesh Kharat, for Applicants.
Mr. A.A.Palkar, APP, for State.
Mr. Kate, API Hinjwadi Police Station, present.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 1st JULY, 2022
PRONOUNCED ON : 13th JULY, 2022**

P.C.

1. These Applications are preferred for pre-arrest bail.
2. The Applicant is allegedly a gang leader. On 15th February, 2021, the Applicant was released from Taloja Central Prison pursuant to the acquittal in a prosecution arising out of C.R.No.239 of 2014 registered at Kothrud Police Station, Pune. To receive the Applicant, large posse of cars and number of persons reached Taloja Central Prison. A procession was taken out consisting of number of vehicles and the hire-lings of the Applicant. Those vehicles proceeded towards Kothrud without payment of toll and blocked traffic on the Mumbai - Pune Highway. The

Applicant and his hire-lings committed breach of the orders which were issued to arrest the spread of COVID-19.

3. With these basic allegations, various crimes came to be registered at different police stations enroute Mumbai – Pune. In C.R.No.48 of 2021 registered with Warje-Malwadi Police Station (subject matter of ABA No.2608 of 2021), the first informant alleged that when the said procession reached Chandani Chowk, Santosh, one of the associates of the Applicant, used criminal force to the police personnel who were trying to restore the order. The Applicant and his associates allegedly proceeded ahead despite an order to stop. They created a sense of terror and also committed breach of the orders promulgated to arrest the spread of contagion. Thus, Balu Gaikwad, Police Head Constable, lodged a report for the offences punishable under Sections 353, 188, 268, 269, 143, 149 of the Indian Penal Code, Section 51(b) of the Disaster Management Act, 2005, Section 3 of the Epidemic Act, 1897, Section 7 of the Criminal Law Amendment Act, 2013 and Sections 37(1) (3) read with Section 135 of the Maharashtra Police Act, 1951.

4. In C.R.No.120 of 2021 registered with Hinjwadi Police Station (subject matter of ABA No.3053 of 2021), the first informant – Abaso K. Sul, Police Naik, reported that enroute Kothrud, the Applicant accompanied by 100-150 associates who had boarded 30 to 35 four wheelers drove those vehicles in a reckless manner, raised loud slogans, caused annoyance to passers by, abused the persons who were using the

road in the other vehicles and thereby created terror. The Applicant and his associates did not stop despite an order to halt the procession. Hence, a report was lodged for the offences punishable under Sections 279, 341, 504, 506 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act, 2013 and Sections 184, 199 read with Section 177 of the Motor Vehicles Act, 1985 and Section 135 read with Section 37 of the Maharashtra Police Act, 1951.

5. When ABA No.2608 of 2021 was listed before the Court on 29th October, 2021, this Court was persuaded to grant interim protection. Likewise, in ABA No.3053 of 2021 interim protection was granted by an order dated 20th December, 2021.

6. I have heard Mr. Kharat, learned Advocate for the Applicant and Mr. Palkar, learned APP for the State in both the Applications.

7. Mr. Kharat, learned Advocate for the Applicant would urge that only the offence punishable under Section 7 of the Criminal Law Amendment Act, 2013 is non-bailable. Having regard to the nature of the accusation, in the circumstances of the case, this Court in ABA No.1315 of 2021 and the connected Applications preferred by the co-accused Rupesh Marne, was persuaded to grant pre-arrest bail, opining that *mens rea* which is necessary for an offence punishable under Section 7 of the Criminal Law Amendment Act, 2013, does not seem to have been *prima facie* made out. Mr. Kharat would thus urge that the Applicant is also entitled for the same dispensation.

8. As against this, Mr. Palkar, learned APP submitted that the Applicant is a gang leader. The procession was taken out to celebrate the release of the Applicant from prison. The intention on the part of the Applicant and his hire-lings was to create a sense of terror amongst the general public. Thus, the case of the Applicant stands on a different footing than that of the co-accused, who is extended the benefit of pre-arrest bail.

9. I have perused the material on record and considered the rival submissions. The indictment against the Applicant is that being a dreaded gangster, he had assembled posse of cars and associates to celebrate his release from the prison. The procession was taken out and, in the process, various offences were committed. In the case of Rupesh Marne, co-accused (ABA No.1315 of 2021 and the connected matters) this Court considered the allegations in the context of the necessity of the custodial interrogation. The applicability of the provisions contained in Section 395 of the Penal Code and Section 7 of the Criminal Law Amendment Act, was specifically adverted to and it was opined that those offences were not prima facie made out. The observations of this Court in paragraphs 5 to 7 are material and hence, extracted below :

“5. Perusal of the allegations levelled against the Applicant would reveal that his supporters have picked up the food articles from the stalls without making payment, but it prima facie, would not fall within the purview of dacoity since it does not satisfy the ingredients of robbery, which requires extortion by putting the person in fear of instant death or instant hurt or

instant wrongful restraint. Section 268 of the IPC, which has been invoked along with Sections 279, 241, 504, 506, 283, 143 are bailable offences.

6. C.R. No.I-48 of 2021 invokes Sections 353, 188, 268, 269, 143, 149 of the IPC and the allegation is that the police constable, who was implementing the order imposed during the Covid pandemic was restrained from discharging his public duty. The Complainant in the said C.R. alleges that he was pushed by hand, by the participants in the procession and without adhering to the orders imposed for restricting the spread of Covid-19, the mob moved ahead. The only section invoked, which is non-bailable is Section 7 of the Criminal Law (Amendment) Act, which punishes an act of molesting a person to the prejudice of his employment or business and the said section imposes punishment for an act of a person committed with an intention to cause any person to abstain from doing or to do any act which a person has right to do or to abstain from doing, obstructing or use of violence or intimidating any person or loitering at or near a place where such person or member or employed person resides, so as to deprive him or hinder him in the use thereof. The offence is punishable with imprisonment, which may extend to six months or with fine. The said offence is non-bailable. The intention which is a necessary ingredient of Section 7 does not prima facie surface from the allegations levelled.

7. In any case, in the wake of all the accusations being summed up together against the present Applicant, it does not warrant the custodial interrogation and, therefore, he is entitled to be released on bail, in the event of his arrest in all the aforesaid four C.Rs. However, this is subject to the stipulation that the Applicant shall report to the respective police stations as and when called for and render all his co-operation in investigation.”

10. Evidently, this Court had given adequate consideration to the nature of the allegations and formed a prima facie opinion that the requisite *mens rea* for invoking Section 7 of the Criminal Law Amendment Act, 2013, was conspicuous by its

absence. It was further noted that the offence under Section 395 of the Indian Penal Code, was also not prima facie made out.

11. I find it rather difficult to agree with the submission of the learned APP that the case of the co-accused stands on a different footing than that of the Applicant. Undoubtedly, the Applicant is alleged to be a gang leader and the event was orchestrated to celebrate the release of the Applicant from the prison. Nonetheless, the complicity of the Applicant is alleged for the same offences for which the co-accused had been arraigned and yet extended the benefit of pre-arrest bail. In any event, the nature of the accusation is such that the custodial interrogation of the Applicant does not seem warranted.

12. Learned APP would urge that the Applicant is a history sheeter and more than 20 offences have been registered against him. The antecedents of the Applicant are undoubtedly replete with the allegations of indulging in offences. However, the nature of the accusation in the instant case and the fact that the major offences, which are non-bailable, do not appear to have been prima facie made out, cannot be lost sight of. Moreover, at this length of time, I do not find any justifiable reason not to make the order of interim protection absolute. Hence, the following order :

ORDER

- (i) The Applications stand allowed.

(ii) In the event of the arrest of the Applicant – Gajanan Pandharinath Marne in C.R.No.48 of 2021 registered with Warje – Malwadi PoliceStation and C.R.No.120 of 2021 registered with Hinjwadi police Station, he be released on bail on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount in each cases.

(iii) The Applicant shall co-operate with the investigation and report to the Investigating Officer as and when directed.

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

(N.J.JAMADAR, J.)