

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 678 OF 2021

Abdul Shahrukh S/o Abdul Farooque

Versus

State of Maharashtra, through P.S.O., P.S. Barshitakli, Dist. Akola

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sirpurkar, Advocate for the applicant.

Shri S.D. Sirpurkar, A.P.P. for the non-applicant/State.

Shri Dharaskar, Adv. h/f Shri Vipul Bhise, Adv. assist to
prosecution.

CORAM : ANIL S. KILOR, J.

DATED : 21/02/ 2022

1. This is an application for grant of anticipatory bail, filed under Section 438 of the Code of Criminal Procedure in Crime No.306 of 2021 registered with Police Station Barshitakli, Dist. Akola on 25.05.2021 against eleven accused persons for the offences punishable under Sections 307, 324, 326, 143, 147, 148, 149, 188 of the Indian Penal Code read with Sections 25(3) and 25(4), of the Arms Act, 1959.

2. It is the case of the prosecution that complainant Abdul Rehman Abdul Rahim has lodged a report alleging that out of monetary dispute between the accused Gudduraj @ Wasimoddin and the complainant, the accused Gudduraj has formed assembly of 10 to 11 persons with weapons like gun, iron pipe, sword etc. in front of the house

of complainant on 24.05.2021 at about 2.30 p.m. It is further stated that at about 4.30 p.m. when the complainant along with his three brothers were present in front of his residence near a temple, they heard some noise and when they went to the spot the accused Aminoddin, Zulfoddin and Tipu were giving abuses in front of the house of the complainant.

3. It is alleged that the complainant trying to console them, at that time two four-wheeler arrived on spot and accused Gudduraj and other persons came out from cars and they were having weapons like gun, sword, knife and iron pipe.

4. It is alleged that accused Khizar fired the gun on complainant but he escaped the same. Thereafter, all the assailants assaulted the complainant's nephew Mohd. Sakib and Sk. Nadim by means of iron pipe, sword and knife. Public gathered on spot and caught hold four assailants and confined them. The other assailants ran away and at that time the accused Khizar had again fired bullet from gun due to which one lady passing nearby was injured.

5. I have heard Shri S.V. Sirpurkar, learned counsel for the applicant and Shri S.D. Sirpurkar, learned A.P.P. for the non-applicant/State and Shri Dharaskar, learned counsel for non-applicant No.2. who is seeking to assist the prosecution.

6. Shri Sirpurkar, learned counsel for the applicant submits that in the First Information Report, the name of the applicant was not mentioned however, in a supplementary statement given by the injured

after one month, he disclosed the name of the applicant and accordingly, the offences was registered against the applicant.

7. It is submitted that even if the supplementary statement is taken into consideration, no role is attributed in the alleged offences against the applicant.

8. It is submitted that this Court has protected the applicant by granting ad-interim anticipatory bail vide order dated 12.10.2021. It is further submitted that the applicant has attended the Police Station as directed by this Court while granting interim protection and he has not misused the liberty. The learned counsel for the applicant therefore, prays that the interim protection granted by this Court on 12.10.2021 may be confirmed.

9. On the other hand, Shri Sirpurkar, learned A.P.P. points out that during the investigation statement of the witnesses were recorded by Investigation Officer and in one of the statement of the independent witnesses, he had disclosed the name of the applicant. It is submitted that in addition to the same, the injured had disclosed the name of the applicant in supplementary statement on 23.06.2021. He therefore submits that sufficient evidence has been collected by the Investigation Officer to show the involvement of the applicant in the present matter. He therefore, prays for dismissal of the application.

10. The learned counsel for the complainant reiterated the submissions of the learned A.P.P. and in addition submits that the

applicant has committed breach of the condition of the ad-interim bail and thereby on 17.10.2021 he tried to pressurized the complainant by abusing him and by giving threat to him. It is submitted that the Police have registered the said complaint as non-cognizable. He accordingly, prays for rejection of the bail application, as the applicant has misused the liberty.

11. I have perused the case diary and also contents of the First Information Report.

12. In the F.I.R., the name of the applicant was not mentioned initially. However, the name of the applicant was disclosed by one of the witnesses. However in the said statement of the witnesses, he has not attributed any role to the applicant in the alleged offences. It is stated by the said witnesses that the applicant was present at the time of incident, but nothing has been mentioned about his role played in the alleged offences.

13. On 23.06.2021, the supplementary statement of the complainant was recorded i.e. after about one month, in which he has disclosed the name of the applicant and accordingly to the complainant has pointed out his finger towards the complainant. There is no explanation why earlier name of the applicant was not mentioned in the FIR, why there is a delay in disclosing the name of the applicant.

14. In the above backdrop, *Prima facie* as no role is attributed against the applicant in the alleged offence, I am of the opinion that the

interim protection granted by this Court to the applicant needs to be confirmed.

15. As regards the registration of non-cognizable offence about the incident dated 17.10.2021, is concerned, the complainant has not further steps in the matter. Moreover, there is no complaint after 17.10.2021, that the applicant has misused the liberty. In this circumstances, I pass the following order:

- a) The application is allowed.
- b) The interim protection granted by this Court vide order dated 12.10.2021 is hereby confirmed.
- c) The applicant shall not tamper with the prosecution witness or pressurized the prosecution witnesses.
- d) The applicant shall attend the Police Station as and when his presence is required.

The criminal application is disposed of, accordingly.

[ANIL S. KILOR, J.]

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