

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 547 Of 2023

Afzal Asir Shaikh

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. B. Deshpande, Senior Counsel instructed by Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the applicant.

Mr. V. S. Badakh APP for the State.

Mr. A. T. Jadhavr, Advocate for the informant.

CORAM : R. M. JOSHI, J.

DATE : 20th JULY, 2023.

PER COURT :

1. The question posed before this Court is when there is allegation of criminal conspiracy and there is also material on record to indicate involvement of the applicant in the serious nature of crime, such as attempt to commit murder, whether it is permissible for the Court to grant anticipatory bail for the reason that charge-sheet has been filed against the co-accused. Answer to this question shall be “no”.

2. Applicant apprehends arrest in connection with Crime No. 241/2023 registered with Topkhana Police Station, Tq. & Dist.

Ahmednagar, for the offence punishable under Sections 307, 323, 143, 147, 148, 149 of Indian Penal Code and Section 4/25 of Arms Act.

3. It is the case of the informant that on the date of the incident, he was brutally assaulted by the accused persons and just before the assault began, he was called upon by one of the assailants to speak to the present applicant over phone. It is the case of the prosecution that the incident in question was not spontaneous however, it was a result of conspiracy hatched by the accused along with present applicant.

4. Learned counsel for the applicant states that applicant is a businessman and has clean past record. It is his contention that investigation into the crime is over with filing of charge-sheet. It is his further contention that applicant is being falsely implicated in this Crime and if the entire material on record is perused, it shows inconsistencies in the statement of witnesses as well as informant. It is sought to be argued that since the applicant was not present at the spot and that there is no allegation against him that he has used any weapon or caused assault to the informant, question of his custodial

interrogation does not arise. It is contended that the incident in question has occurred on the road and therefore, it could not have been assumed by the assailants that informant would be present at the said spot in order to accept the theory of criminal conspiracy. By emphasizing on the liberty of an individual, it is contended that this is not a fit case wherein custody of the applicant is required. To buttress his submission, he placed reliance on the judgment in the matter of Siddharam Satlingapa Mhetre vs. State of Maharashtra and others, (2010) 15 (Addl.) SCR 201.

5. Learned APP and learned counsel for the informant opposed the said submission by stating that prima facie perusal of the material collected during investigation clearly indicates that the incident of assault was result of conspiracy and that present applicant is part of the said conspiracy. Reliance is placed on CDR of the mobile phone of co-accused Nasir and present applicant which precisely gives the timing at which the incident of assault has taken place. It is submitted that as such it is difficult for the prosecution to prove criminal conspiracy for want of direct evidence and wherever there is direct evidence against the accused, the Investigating Agency cannot be denied right of fair and further investigation into the crime.

6 The Hon'ble Apex Court in the case of Siddharam (supra) has laid down guidelines which are to be considered for the purpose of deciding anticipatory bail application. One of the criteria which is required to be considered is the nature and gravity of accusation. Here in this case, the informant was assaulted by number of persons which is supported by the injury certificate placed on record. Though out of 8 injuries 7 injuries are simple in nature, for the purpose of attracting provisions of Section 307 of Indian Penal Code, the nature of injury hardly matters. What the Court needs to see is as to whether prima facie there is material to indicate that there was an attempt to commit murder of the informant. The evidence on record is not short to at least prima facie hold so. The Hon'ble Apex Court has also clearly held that for the purpose of granting anticipatory bail balance has to be struck between two factors namely that no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

7. This Court at this stage is not expected to sift and weigh the material collected by Investigating Agency during the course of

investigation as the same would be within the domain of the Trial Court. However, prima facie consideration of the material on record indicates that there are statements of witnesses which show that a conspiracy was hatched for assaulting the informant. Submission made by learned counsel for the applicant therefore does not deserve acceptance that the incident had occurred all of a sudden and therefore, there is no question of conspiracy being hatched for the said purpose. Even if some inconsistencies are found in the statements of witnesses, which is bound to happen owing to the capacity of the person to remember the occurrence of incident, what is relevant in present case is that the informant immediately after occurrence of the incident at the first available opportunity has disclosed that just before he was assaulted he was called upon to take with the present applicant. This contention of the informant gets corroboration by the CDR which precisely shows the timing at which there was call between the co-accused and the present applicant. This fact cannot be brushed aside by way of branding it as a sheer coincidence. Thus shows that it is not a case of false implication as claimed by the applicant. On the contrary, the case sought to be made out by the prosecution about criminal conspiracy of the accused and applicant to cause assault on the informant gets

support from the material placed on record. A man may lie but the circumstances never. CDR at this prima facie stage is more than sufficient evidence to connect the applicant with this crime. The learned APP was perfectly justified in submitting that first of all it is difficult to prove the criminal conspiracy by any direct evidence and whenever any evidence is available in order to show involvement of the applicant in the crime, the Investigating Agency cannot be denied its right to investigate and to unearth the said conspiracy.

8. As it is a case wherein there is prima facie evidence to connect the applicant with the crime and further investigation is essential and it is not a case of false implication, the applicant is not entitled to bail. Hence, application is rejected.

9. After pronouncement of order, learned counsel for the applicant seeks extension of interim relief for the period of four weeks. Learned APP opposed the request for extension of relief.

10. Since the liberty of the applicant was protected since March, 2023, an opportunity needs to be given to him to test this

order before the Hon'ble Apex Court. Hence, interim relief extended by four weeks.

(R. M. JOSHI)
Judge

dwb