

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.743 OF 2023

SHRIMANT ASHOK GHODAKE

VERSUS

THE SUPERINTENDENT OF POLICE, AHMEDNAGAR AND ANOTHER

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Advocate for Applicant : Mr. R. R. Karpe

APP for Respondents: Mrs. G. L. Deshpande

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 5 of 2023 registered with Belvandi Police Station, Ahmednagar for the offences punishable under Section 397 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act.

2. The first information report shows that an incident had occurred on 06.01.2023 at around 06.00 pm. Co-accused Keshav came along with two unknown persons at the spot with sword, iron pipe and wooden stick. Keshav assaulted informant with sword and he took cash of Rs. 20,000/- from the cash counter of the hotel.

3. Learned Counsel for the Applicant states that Applicant is not named in the FIR and that there is no evidence showing his involvement in the crime except

statement of the co-accused. It is also stated that from the record it is clear that the weapons are already seized. It is also informed that charge-sheet has been filed after conclusion of investigation. Thus, according to him, this is not the case wherein custodial interrogation of the Applicant would be necessary.

4. Learned APP opposed the application by referring to the supplementary statement of informant and other witnesses in order to submit that these witnesses identified the unknown person to be present Applicant on the basis of the photographs shown to them by the police.

5. There is no dispute about the fact that informant has not named present Applicant to be the assailant in the said incident occurred on 06.01.2023. The allegations of injury caused with sword to informant is attributed to the co-accused Keshav. Even the allegation of snatching money from cash counter is not made against present Applicant. The supplementary statement are recorded on 15.05.2023 whereas the FIR was lodged on 07.01.2023. Even while recording said

supplementary statement, this witness did not state as to the date on which police has shown photograph and on that basis this witness and informant have identified present Applicant to be one of the assailants.

6. Having regard to the nature of investigation carried out more particularly in view of the facts that there is nothing on record to indicate that any attempt was made by the investigating officer to verify installation of CCTV camera at any place as incident in question appears to have happened at a market place wherein number of shops are situated. The investigating officer cannot be allowed to oppose application upon the belated statements recorded of the witnesses.

7. In view of the above, there is *prima facie* no reliable evidence to connect present Applicant with the crime moreover the recovery of the weapons has already been done and filing of the charge-sheet indicates that his custodial interrogation was not required even during the course of investigation. Hence, application is allowed in terms of interim order dated 12th May, 2023.

(R.M. JOSHI, J.)