

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

945 ANTICIPATORY BAIL APPLICATION NO.842 OF 2023

NILESH DIPAK JADHAV
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Pratap B. Vikhe
APP for Respondent – State : Mr. G.O. Wattamwar
...

CORAM : R. M. JOSHI, J.
DATE : 7th JULY, 2023

PER COURT :

. Applicant is apprehending arrest in connection with Crime No.394 of 2021 registered at Shirdi Police Station, Tal. Rahata, Dist. Ahmednagar for the offences punishable under Section 307, 109, 120-B, 201, 212, 506 r/w. 34 of Indian Penal Code and Section 3, 7, 25 and 27 of Arms Act and Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA).

2. Informant - Sachin gave information about the incident occurred on 10.12.2021 at about 00.30 a.m. He stated in complaint that assailants came in the four wheeler and fired bullet shots at injured - Suraj. In the said incident, he sustained injuries. It is

further stated in the FIR that informant and present applicants took to the hospital.

3. Learned counsel for applicant states that since applicant is a witness of the incident and only because wife of one of accused is a police personnel posted at the same police station, applicant is sought to be implicated in this crime. It is submitted that charge-sheet is filed and statement of the injured shows that assailants had fired bullets at applicant also. However, he is survived in the said assault, which indicates that he is neither victim nor accused.

4. Learned APP opposed application by relying upon conversation between applicant and co-accused, which according to him indicates that applicant had instigated assault. Learned APP also submitted that there are criminal antecedents of applicant.

5. First Information Report clearly shows that applicant was present at the spot and that in his presence the assault was caused on the injured - Suraj by firing bullet shots at him. It is further recorded in the FIR that applicant and informant took injured to the hospital, if

it is so the question of he intending to kill injured does not arise. Statement of injured also shows that the bullet was fired at present applicant which completely rules out his involvement in the crime. The conversation sought to be relied upon by learned APP in fact is a phone call between applicant and co-accused at the time of actual occurrence of incident as in the transcript of the said conversation there is mention about hearing of the two bullet shots. It indicates that it is not the case of the assault caused by accused at instigation of the present applicant. In fact, this Court finds substance in the contention of learned counsel for applicant that in order to ensure that applicant does not become a witness, he is tried to be implicated by police in the present crime.

6. As far as contention of learned APP about criminal antecedents of applicant is concerned, since this Court has prima facie recorded the findings that this appears to be the case of false implication of applicant in this crime, his antecedents have no relevance.

7. In view of the aforesaid facts and circumstances of the

case, application deserves to be allowed and hence following order is passed.

ORDER

- (i) Application is allowed in terms of interim relief dated 30.05.2023.

[R. M. JOSHI]
JUDGE

GGP