

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1752 OF 2022

Anil Babanrao Jadhav

.... Applicant

Versus

The State of Maharashtra
and another

.... Respondents

.....

Mr. Hrishikesh Chitaley, Advocate h/f Mr. S.V. Dixit, Advocate
for the Applicant

Mr. A.V. Deshmukh, APP for Respondents – State

Mr. A.A. Joshi, Advocate h/f Mr. Sharad V. Natu, Advocate for
the informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JANUARY, 2023

ORDER :

1. The applicant apprehends his arrest in connection with Crime No.01029 of 2022 registered with Tophkhana Police Station, Ahmednagar for offences punishable under sections 326, 324, 109, 504, 506 read with 34 of the Indian Penal Code.

2. FIR is lodged by Sachin Gardas alleging that on 16/11/2022 at 20.30 Hrs., he was returning home along with his friend Sanjay Siddham after having dinner at *Viram* Hotel, Sona Nagar, Ahmednagar. While returning home, at Sona Nagar square, one unknown person signalled him to stop. He

slowed down his motorcycle. At that time, one unknown person caught his collar and pulled him, due to which he and his friend fell down. His friend Sanjay ran away from the spot due to fear. When he was trying to push the person who pulled him down, another unknown person hit him on right hand with the baseball's wooden log. Thereafter, the person who pulled him down and his third colleague started abusing him in filthy language and assaulting him with wooden log. Their fourth colleague also assaulted him with wooden log. When he asked them as to who they are and why they are assaulting him, one of them abused him and told him not to take confrontation with Anil Sheth (applicant). Another person told him that he should sign on the property papers of the applicant, otherwise he and his family members will be killed. If he does not sign, consequences will be very bad. They again started beating him. When he raised hue and cry, the owner of *Viram* Hotel Kiran Bavaskar and his friends rushed towards him. On seeing them, the assailants ran away from the spot.

3. Heard learned advocate for the applicant, learned Additional Public Prosecutor for Respondents – State and the learned advocate for the informant. Perused the investigation papers.

4. Learned advocate for the applicant urged that though the incident had taken place on 16/11/2022, FIR is lodged on 20/11/2022. The informant has not explained delay of 4 days in lodging FIR. He submits that the applicant, his mother, brother, one Yogesh Khonde and the informant were partners. The partnership deed was registered. According to which, the applicant had 55% share in the partnership and the informant had 5% share. The partnership was entered into for development of Survey No. 74/3 admeasuring 7940 Sq. Mtrs. Area. For the said development, the property was mortgaged with the Bank and loan was obtained. The partnership was only for the said project and was to terminate on completion of the project. The applicant single-handedly repaid the loan. The property which was taken for development was sold for settlement of the loan account. The development agreement was cancelled by registered cancellation deed No.7090 dated 14/09/2022, so also, registered power of attorney was executed in favour of applicant on 11/11/2022. Thus, it is the case of applicant that with the sale of project property, the partnership deed ceased to exist as the project itself ceased to exist, and in fact, loss was incurred by the partnership which was entirely borne by the applicant. No further settlement of

accounts of the firm was necessary, and therefore, there was no need for the applicant to obtain signatures of the informant. According to the applicant, since there was no profit from the business of the partnership, out of grudge, the applicant is implicated in the present crime. Further submission is that since there were no transactions left between applicant and informant, applicant had no occasion to cause assault on the informant. He submits that the applicant was granted interim protection, and he has attended police station and has co-operated in the investigation. Nothing has to be recovered from the applicant.

5. Learned Additional Public Prosecutor strenuously opposed the application contending that the weapons used in the present crime are yet to be recovered, and the other accused are yet to be arrested. The applicant is influential person, and he is likely to influence the prosecution witnesses. He submits that since the informant was not in a condition to give statement, the FIR could not be registered at earlier point of time. The informant has suffered grievous injuries including fracture, and therefore, section 326 is added in the present crime subsequently. He submits that custody of the applicant is necessary for investigation.

6. It is clear from the investigation papers that none of the accused persons are yet arrested. One of the assailants has specifically named the applicant during assault and threatened the informant not to take confrontation with the applicant. *Prima facie*, it shows that at the instance of applicant, the informant was assaulted by unknown persons. The involvement of applicant is further fortified by the statement of the assailant that the informant should sign the property papers of the applicant, and if he does not sign the papers, the consequences will be very serious.

7. Injury certificate of informant shows multiple fractures and other injuries suffered by the informant. There appears substance in the contention of learned Additional Public Prosecutor that since the informant was not in a position to give statement, the FIR could not be promptly lodged. There is an endorsement of the medical officer on the letter of Investigating Officer dated 19/11/2022 that, "*patient is not in condition to give any statement.*" The statement of owner of *Viram* Hotel supports the allegations made in the FIR, as the informant has immediately disclosed the incident and the name of applicant to this witness.

8. From the above aspects, *prima facie*, the involvement of applicant in the offence is made out. The actual assailants are yet to be arrested, the weapons used in the crime are yet to be recovered. Unless the applicant is taken in custody, it is not possible to ascertain as to who were engaged to assault the applicant. Considering serious allegations levelled against the applicant, and *prima facie*, active involvement of the applicant in the present crime, I am not inclined to grant him anticipatory bail.

9. In the result, application is rejected.

10. At this stage, the learned advocate for the applicant requests that interim protection granted to applicant vide order dated 23/12/2022 may be continued for a period of three weeks to enable the applicant to approach the Hon'ble Apex Court.

11. The interim protection granted to the applicant to continue for a period of three weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane