

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3149 OF 2023

Amarjeet Balasaheb Pawar ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Govind Solanke, for the Applicant
Mr. S.H. yadav, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : NOVEMBER 6, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 220 of 2023 registered at Karkambh police station for the offences punishable under sections 326, 324, 504, 506 read with 34 of Indian penal Code, 1860.
3. The indictment against the applicant runs as under.

The first informant resides at Aajoti Pati, Vhole, Tal. Pandharpur. On 21st June, 2023 at about 1.30 pm the first informant was informed that the applicant and the co-accused Shubham were removing the trees cut by the first informant. When confronted, the applicant and the co-accused retorted that those trees were road side trees and the first informant had no concern

with those trees. An altercation ensued. The co-accused Shubham allegedly picked up a stone and gave a blow on the head of the first informant. His son Abhishek came to his rescue. The applicant was armed with an axe. The applicant unleashed blows by means of blunt side of the axe on the head, back and left hand and one blow by means of sharp side of the axe near the armpit of the first informant. The first informant claimed to have sustained grievous injuries.

4. The learned counsel for the applicant submitted that the co-accused Shubham has been released on bail. However, the learned Additional Session Judge declined to exercise the discretion in favour of the applicant. It was submitted that as the investigation is complete for all intent and purpose, at this stage, the custodial interrogation of the applicant is not warranted. In fact, according to the learned counsel for the applicant, the accused were assaulted by the informant party and the applicant had lodged first information report No. 219 of 2023 prior in point of time for the offences punishable under sections 324, 341, 504 and 506 read with 34 of the Indian Penal Code. As cross first information reports have been lodged in respect of one and the same incident, the applicant deserves exercise of discretion.

5. The learned APP, on the other hand, submitted that the injury

certificate clearly indicates that the applicant has sustained a fracture. A grievous injury was found on the left axillary region and lateral wall of axilla. There are specific allegations against the applicant of having assaulted the first informant by means of an axe. The weapon of assault is yet to be recovered. Therefore, the applicant does not deserve to be released on pre-arrest bail.

6. I find substance in the submissions of learned APP. Prima facie, the allegation in the first information report indicate that when the altercations ensued between the first informant and the accused, the applicant initially assaulted the first informant by means of blunt side of axe and later on by its sharp side. Injury certificate, prima facie, lends credence to the version of the first informant. There are indeed specific allegations against the applicant.

7. The fact that co-accused Shubham was released, on bail, post arrest, is of no avail to the applicant. In fact, the learned Additional Session Judge recorded that the weapon which was used by the co-accused Shubham i.e. the stone came to be recovered and there was no allegation that the said co-accused has used axe to assault the first informant.

8. The material on record, thus, prima facie shows that the applicant had assaulted the first informant by means of a deadly

weapon. The injury certificate lends prima facie credence to the applicant's version. The fact that the applicant has also lodged the report in respect of the same occurrence, does not necessarily lead to an inference that the version reported by the first informant is, by way of a counter blast. Prima facie, the injury certificate operates as a formidable dyke against such implication.

9. I am, thus, inclined to hold that the custodial interrogation of the applicant is warranted to facilitate further investigation and also for the recovery of the weapon of assault. Release of the applicant on pre-arrest bail in the face of such material would jeopardize the interest of effective investigation and that of the victim. Hence, the application deserves to be rejected.

Thus, the following order.

ORDER

- 1) The application stands rejected.
- 2) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)