

HEMANT
CHANDERSEN
SHIV

Digitally signed
by HEMANT
CHANDERSEN
SHIV

Date:
2023.07.12
11:30:40 +0530

1/8

15.aba1564.23.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1564 OF 2023

Hitendra @ Hiten Gulbir Thakur	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.2280 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1564 OF 2023**

Pratham Sandeep Gaikwad	... Applicant
-------------------------	---------------

In the matter between

Hitendra @ Hiten Gulbir Thakur	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Amit Singh for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.
Mr. Charan Penthalia for the Intervenor.

CORAM : S. M. MODAK, J.

DATED : 26TH JUNE 2023

PC:-

1. This Court as per order dated 5th June 2023, was pleased to grant interim protection to the Applicant. The interim

protection was granted is explained by giving reasons

2. Today, I have heard learned Advocate for the Applicant, learned Advocate for the Intervenor and learned APP for the Respondent-State on the point of confirmation of the interim protection.

3. The Investigating Officer is present. Generally, while deciding Bail Application or Anticipatory Bail Application, the Court is not expected to scrutinise the materials at great length. The reason is that if this exercise is done, it will effect the rights of parties during trial. But there are certain occasions, wherein the Court is required to deal with materials at great length particularly when certain additional materials are placed on record or when there is contention that one material collected by the prosecution falsifies other material. This is a case, wherein this Court is required to do that exercise. After doing that exercise whether the Applicant succeed in getting confirmation or not is different issue.

4. After hearing both sides, the following are circumstances relied upon by the prosecution and the first informant :

- (a) Lodging of the FIR with Central police station on 9th December 2022 under sections 307, 323, 504, 506 506(2) read with 34 of IPC and under sections 37(1) and 135 of the Maharashtra Police Act.
- (b) Four accused are named in the FIR. The Applicant is accused No.1, and rest three accused are charge-sheeted.
- (c) There is specific allegation in the FIR that present Applicant has threatened the first informant with the help of knife.
- (d) The memorandum statement of co-accused-Yogesh Wagh (page 99) thereby showing the place of concealment of motor cycle used in the offence. The said accused has also said about involvement of the present Applicant.
- (e) There is non-cognizable complaint filed on 8th December 2022, by witness Vishal Gupta and the accused is present Applicant (page 88).
- (f) Viewing of CC TV from the cameras installed in and around spot and the panchnama dated 12th December 2022, wherein it is viewed by Sandeep Gaikwad, father of the first informant.

- (g) There is statement of one Vishal Gupta dated 9th December 2022, (page 112), wherein he has informed to the first informant Sandeep Gaikwad that the present Applicant and others were in his search.
- (h) Statement of one Yogesh Gupta dated 11th December 2022, (page 113), is there, where he has said that he has seen actual incident and involvement of the present Applicant.

Submissions

5. Learned Advocate for the Applicant claims that even though the father of the first informant knows the Applicant earlier to incident, while describing the assailants he has not stated that present Applicant is one of them.

6. As against this learned Advocate for the Applicant submitted that this is FIR filed because of retaliation, there is a complaint made by the present Applicant to various authorities including police against injured Pratham on 18th October 2022, (page 188), wherein injured Pratham has given threat on social media, (page 191).

7. Learned Advocate for the Applicant has pointed out serious lacunae in the material as referred above. They are as follows :

- (i) Even though statement of Yogesh Gupta as an eye witness is recorded on 11/12/2022, he was very much available when cloth seizure panchnama was performed on 9th December 2022. He mean to say that at that time he has not stated about witnessing the incident.
- (ii) Witness - Vishal (page 112) stated that he has informed to the first informant about possibility of assault. In CDR annexed to the charge-sheet, such call is not reflected in CDRs of mobile belonging to the first informant.
- (iii) There is earlier FIR bearing C. R. No.266 of 2020 filed by Sandeep Gaikwad, who is father of the first informant wherein he has alleged that present Applicant is one of the assailants, (page 78). He mean to say that father of the first informant was knowing the Applicant earlier. Inspite of that even after viewing CCTV footage, he has not described present Applicant as one of the assailants.

8. In addition, to above learned APP has shown to me CCTV footage viewing panchnama dated 20th June 2023, wherein the first informant Pratham Gaikwad has identified the assailant shown in those camera as the present Applicant.

9. For the reasons stated hereinabove, I am rejecting few of the contentions, because it falls within realm of appreciation of evidence. It is not permissible now, so to say when witness Vishal Gupta has called the first informant “that present Applicant along with others were in his search”, this call is not reflected in CDR of the Applicant. This cannot be considered at this stage.

10. So what is left is the statement made by the first informant thereby involving present Applicant as one of the assailant and two viewing panchnama of the CCTV footage, one is dated 12th December 2022, by father of the first informant i.e. immediately within four days from the incident. The father has not described the present Applicant as one of the assailant. In the FIR (which is at page 78), on page 79, the father has described two unknown persons as assailants. In that earlier FIR, the first informant has not described present Applicant as one of the assailant. It is

claimed by learned APP that subsequently during investigation the involvement of present Applicant is disclosed.

11. In addition, we have got CCTV viewing panchnama tendered today i.e. 20th June 2023, wherein the first informant has identified the present Applicant as assailant as seen in CCTV footage.

12. I am not inclined to confirm the ad-interim protection. It is for the reason that present Applicant is named in the FIR and his role is also assigned. Merely because earlier the present Applicant has complained against the first informant cannot be ground to confirm the anticipatory bail. That can be considered as defence which is available at the time of trial.

13. The fact that the father-Sandeep of the injured, has lodged the FIR against unknown persons, it mean to say that at the time of that incident the father was not knowing the present Applicant. Subsequently, the involvement of the Applicant is disclosed in that FIR being C.R.No.266 of 2020. Hence, the contention that father has not identified this Applicant in viewing panchnama cannot be accepted at this stage.

14. So on the basis of reference in the FIR and his involvement, no case for confirmation of the anticipatory bail is made out.

15. Order dated 5th June 2023, stands vacated. Consequently, pre-arrest Bail Application is rejected. Interim Application No.2280 of 2023 is also disposed of.

(S. M. MODAK, J.)