

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO.2201 OF 2023

Sanjay Nehru Naik ... Applicant

V/s.

The State of Maharashtra ... Respondent

SHABNOOR
AYUB
PATHAN

Digitally signed
by SHABNOOR
AYUB PATHAN
Date: 2023.08.08
19:04:21 +0530

Mr. Nitin H Sejpai a/w Ms. Pooja N Sejpai, for the Applicant.

Mrs. Rutuja Ambekar, APP for the State-Respondent.

Mr. Sachin K. Hande, for Complainant.

Mr. Ishan Kharote, API, Navi Mumbai Crime Branch, Unit 3.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.I-204 of 2023 registered with NRI police station, for offences punishable under Sections 307, 326, 120-B r/w 34 of the Indian Penal Code, 1860 (for short 'IPC'), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. The brief as alleged in the First Information Report (F.I.R.) are as under:

On 23 June 2023, at about 8:00 pm, the informant was injured. He was with his friends namely Vitesh Mhatre and Ashwin

Naik. He chairman of one political party at Ulwe City. He is a contractor and presently Up-Sarpanch of the village Vahal. The informant was returning to home that at that time four unknown persons ranging between the age 25 to 30 years rushed on his person and started hitting by iron rod and wooden log. One person from those four tried to assault informant by sharp weapon like as a knife to which informant avoided. But, he was hit on his head. Friends of informant shouted loudly against those four persons. Said persons assualted Vitesh Mhatre and Ashwin Naik by iron rod and wooden log. They fled away from the spot by scooty. The informant had seen the said scooty. The informant, therefore, lodged report.

3. Apprehending arrest the applicant approached under Section 438 of Cr.PC. before learned Sessions Judge which came to be rejected by order dated 19 July 2023.

4. The learned Advocate for the applicant submitted that the applicant's name is not mentioned in the F.I.R. He has been falsely implicated due to political rivalries. According to him, he was not present at the spot of incident. Therefore, according to him, he is entitled to protection under Section 438 of Cr.PC.

5. Per contra, learned APP submitted that the statements of witnesses indicate motive and role attributed to the applicant. The statements of co-accused indicate specific role of entrusting job of assault on them by the applicant. The CDR record indicates applicant's contact with the co-accused persons up to 16 June 2023. According to prosecution, thereafter, the applicant and other

accused persons were in contact through social media i.e. WhatsApp. Details of the said record is awaited. It is, therefore, submitted that custodial interrogation of the applicant is necessary.

6. On perusal of case papers and material on record, it appears that the statement of two witnesses alleged motive to the applicant. The alleged motive is filling of complaint in relation to rights of applicant over the immovable property before the State Government. Accepting the complaint, prosecution was lodged against the applicant and therefore, allegations that applicant hired co-accused persons to carryout assault on the deceased person get support.

7. Moreover, statements of co-accused persons who allegedly assaulted the informant provide details of conversation with the applicant which shows applicant's complicity in crime alleged. The statements of co-accused may not be admissible in the trial. However, for the purpose of investigation, the investigating officer is entitled to use statements of co-accused persons to further investigate into the matter.

8. Overall, consideration of motive as alleged, role attributed to the applicant by witnesses and statements of co-accused persons along with earlier CDR report, no case to grant relief under Section 438 of Cr.P.C. is made out. The anticipatory bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)