

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 831 OF 2024
WITH
CRIMINAL APPLICATION NO. 2631 OF 2024
IN ABA/831/2024

Rahul Gorakh Pund

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Narwade Narayan B.

APP for Respondent/State : Mr. S.M. Ganachari

Advocate for Complainant : Mr. N.S. Shah

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CORAM : S.G. MEHARE, J.

DATED : JULY 04, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.
2. The applicant seeks pre-arrest bail in Crime No.298 of 2024 registered with Ahmednagar Taluka Police Station, District Ahmednagar for the offence punishable under Sections 307, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and Sections 37(1), 37(3) and 135 of the Maharashtra Police Act.
3. It is the incident of the assault by mob and breaking the furniture of the hotel run by the complainant. The FIR reveals two incidents. Firstly, the cook was assaulted and lastly, the presence of the applicant was shown with other co-accused. In the last incident,

one of the co-accused Shubham Pund assaulted the injured/complainant with iron rod.

4. The applicant has a case that on the date of the incident, he was not in the village. However, the villagers including him had made the complaint to the Village Panchayat for the illegal business of liquor of injured run in his hotel which is near the house of the applicant. After the complaint was made, the Village Panchayat passed the resolution to stop the illegal business of liquor selling. The Village Panchayat also made representation to the Superintendent of Police before the incident. Since the complaints were made against the complainant, he has been falsely implicated in the crime. An application to verify all the call details have also been made to the Superintendent of Police.

5. Learned counsel for the applicant would submit that since the complaints were made against the injured, the applicant has been falsely implicated in the crime. No role is attributed to the applicant. There are no antecedents to his discredit. Considering the FIR itself, his custodial interrogation is not essential. Hence, pre-arrest bail may be granted to him.

6. Learned APP has strongly opposed the application. He would submit that he was the member of the unlawful assembly. The furniture of the hotel of the injured has been seriously damaged. The accused was repeatedly assaulted. Since the incident happened, there

is no reason to implicate the applicant in the crime. Considering the nature of injuries suffered and the offence, the applicant does not deserve pre-arrest bail.

7. Learned counsel for the complainant/injured vehemently argued that the complaint lodged against the injured has been manipulated. The complaint is dated 08.11.2023, however, it is shown as 06.11.2023. The injured is not involved in illegal business of liquor. The applicant participated in the crime. He was the member of the unlawful assembly. To bolster his arguments, he relied on the case of Kumer Singh Vs. State of Rajasthan and Anr, (2021) 6 SCR 539. In para 14, in this case the bail was refused as there were 26 injuries found on the dead body of the deceased and 11 injuries were on the person of injured by blunt and sharp weapons. Further it has been held that merely because they were armed with lathis cannot be a ground to release them on bail, in the facts and circumstances of the case, more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC as well as Sections 147 and 148 of the IPC. Referring to this judgment, he has argued that mere presence of the accused on the spot of the incident is sufficient to attract Section 149 of the Indian Penal Code. There are specific allegations against the applicant that he was there on the spot with the co-accused. One of

the co-accused has assaulted the injured. He prayed to dismiss the application.

8. The applicant has a specific plea of *alibi*. The material placed on record shows that the complaints were made against the injured for his illegal business of liquor to Village Panchayat. After the complaint was lodged, the Village Panchayat has passed the resolution and also submitted a representation to the Superintendent of Police against illegal activities of the injured about selling liquor. Reading all these documents, barely the difference in the dates of application would not make the submissions false. Whether applicant was the member of unlawful assembly would be the matter of merit. The question is whether in the given circumstances, the custodial interrogation of the applicant is essential. On reading the papers before the Court as it is, the applicant has been shown present on the spot of incident. There are no specific allegations levelled against him. So, there are least possibilities of his custodial interrogation. However, the investigation may be made with him by imposing certain conditions.

9. On going through the papers and the defence raised by the applicant, the Court is satisfied that this is a fit case to exercise the discretion under Section 438 of the Criminal Procedure Code. Hence, the following order :

ORDER

- (i) Anticipatory Bail Application is allowed.
- (ii) In the event of arrest, Applicant, Rahul Gorakh Pund, be released on anticipatory bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall attend the concerned police station daily from 08.07.2024 between 10.00 am to 01.00 pm till filing the charge sheet.
- (iii) Criminal Application No.2631 of 2024 stands disposed of.

(S.G. MEHARE, J.)