



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1904 OF 2023

Abhishek S/o Dnyaneshwar Jarhad

...Applicant

VERSUS

The State of Maharashtra

...Respondent

Mr. K.N. Shermale, Advocate for applicant.

Mr. S.B. Jadhav, APP for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 4th MARCH, 2024

PRONOUNCED ON: 18th MARCH, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No. 417 of 2023, registered with Badnapur Police Station, District- Jalna, for offences punishable under sections 392, 341 read with 34 of the Indian Penal Code.

2. Onkar Kulkarni lodged FIR alleging that as he has completed D-Pharmacy course he went to Chhatrapati Sambhajinagar on 30.07.2023 to inquire about admission of M-Pharmacy course. He was returning at about 5.00 pm to Bajar Wahegaon. While proceeding to Kusali road, one kilometer ahead of Kusali, on pathway, at about 8.00 pm three unknown persons sitting on Hero Splender motorcycle, who were wearing black

Bhagyawant Punde

masks had overtook him and obstructed informant by their motorcycle. They asked informant where the road leads. Informant suspected about foul play and therefore he parked the motorcycle and started running in the agricultural field. Out of three, two persons followed and caught him. That time, in the scuffle one person's mask was removed. He was lean person of 22 to 23 years of age having black complexion. Thereafter he caught informant's collar and by showing knife threatened to kill him and asked informant to handover rings and mobile phone. Informant handed over two gold rings and a mobile phone. Thereafter, all three persons left the spot. It is stated that if the person who has shown knife to informant is shown to him, he will recognise him. Since he was frightened and was apprehending that he was robbed by habitual criminals and they may kill him, he immediately did not lodge FIR.

3. Heard learned advocate for applicant and learned APP for respondent-State. Perused the investigation papers.

4. Learned advocate for applicant submits that there is delay of three months in lodging FIR. The incident dated 30.07.2023 is informed on 28.09.2023. Applicant is not named in the FIR and he is implicated in the present crime on the basis

of statement of co-accused, which is not admissible in evidence. No identification parade is held. He further submits that other accused persons are already released on regular bail and knife allegedly used in the crime is already recovered from applicant. Custodial interrogation of applicant is therefore not necessary. Hence, interim protection granted to applicant may be confirmed.

5. Learned APP on the other hand strenuously opposed the application submitting that knife used in the crime is recovered from applicant. It is revealed during investigation that applicant is mastermind of the crime. Stolen motorcycle is used in the crime and for that FIR is lodged against co-accused. CDR location of applicant is tracked and it is revealed that he was at the spot of incident at the time of crime. Applicant had borrowed motorcycle from his friend which is used in commission of present crime. Gold ring of informant weighing five grams is to be recovered from applicant. Applicant has criminal antecedents and therefore he is not entitled for anticipatory bail.

6. Learned advocate for applicant by placing reliance on Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another, (2012) 2 SCC 382 submitted that anticipatory bail

to the applicant cannot be rejected merely on the basis of criminal antecedents. Reliance is also placed on decision of Apex Court in Criminal Appeal Nos. 152 of 2020 and 153 of 2020 (Prabhakar Tewari vs. State of U.P. & Anr.).

7. During the investigation it is revealed that applicant is the mastermind of the robbery. He along with co-accused Sandip Kolhe and Akash Jarhad has robbed informant on 30.07.2023. Accused Akash was arrested on 29.09.2023 and accused Sandip was arrested on 03.10.2023. They have confirmed the involvement of applicant in the present crime. One gold ring weighing 4 gram and one cell phone of Vivo company robbed from informant are recovered from arrested accused. Arrested accused have disclosed that two rings and Vivo company cell phone were robbed from informant and those were distributed amongst three accused persons. Gold ring of informant weighing 5 gram has gone to the share of applicant and same is yet to be recovered.

8. Offence at C.R. No. 370/2023 is registered against applicant with Badnapur Police Station, for offences punishable under sections 143, 435, 427, 341, 186 of IPC and section 3 and 4 of the Prevention of Damage to Public Property Act, 1984. So

also, offence at C.R. No. 371/2023 is registered with same Police Station for offence punishable under sections 435, 427, 143, 147, 149, 188, 186 of IPC and section 3 and 4 of Prevention of Damage to Public Property Act, 1984.

9. Reliance by learned advocate for applicant on Maulana Rashadi (supra) and Prabhakar Tewari (supra) is misplaced and misconceived. In Maulana Rashadi (supra) the accused, a sitting Member of Parliament was arrested and was in jail since 24.08.2009. Trial commenced and prosecution examined two witnesses till 26.07.2010. During the pendency of trial, High Court granted temporary bail to accused. Informant questioned the grant of bail on various grounds including that he has received several threat calls and there are several criminal cases registered against accused. In these facts, Apex Court observed:

"10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of second respondent cannot be rejected. In other words, it is the duty of the court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the

court, etc.”

In the case in hand, applicant is seeking anticipatory bail and therefore decision in Maulana Rashadi (supra) is of no help to applicant.

10. In Prabhakar Tewari (supra) also the order of grant of bail to accused by High Court was challenged before the Apex Court. It was also submitted that there are other criminal cases pending against accused. The Apex Court declined to interfere in exercise of discretion by High Court in granting bail to accused. This decision also is of no relevance to the facts of the present case.

11. Applicant has committed offence of robbery between sunset and sunrise and his involvement in the present crime is revealed during the investigation.

12. Considering the gravity of accusations and complicity of applicant in the present crime, applicant does not deserve discretionary relief of anticipatory bail. For effective investigation and for recovery, custodial interrogation of applicant is necessary. Application is therefore rejected.

13. Before parting with this order, this Court deem it necessary to take note of objectionable conduct of learned advocate for applicant Shri. K.N. Shermale. This matter was heard on merits on 26.02.2024 and this Court expressed disinclination to grant relief to applicant. Then, learned advocate for applicant sought adjournment for relying on citations of Supreme Court on the point that criminal antecedents of accused/applicant may not be a decisive factor for rejection of anticipatory bail. The matter was therefore adjourned and kept on 01.03.2024.

14. When the matter was called out on 01.03.2024, learned advocate for applicant placed reliance on clause No. 4 of notice dated 08.02.2024 issued by Registrar (Judicial-I) and submitted that since interim protection in the present matter is granted by HMJ R.M. Joshi, the matter needs to be placed before the same Court for disposal. Clause No. 4 of said notice reads thus:-

"All Bail Applications, wherein interim relief is granted, shall be placed before the Hon'ble Judge who has granted interim relief."

15. Clause No. 1 of said notice reads thus:

"This direction will not apply if the Hon'ble Judge, who

has decided the First Bail Application arising from the same FIR, is not available at the Station/Bench or is part of Division Bench.”

16. By referring the clause, when it was pointed out to learned advocate for applicant that HMJ R.M. Joshi is presently sitting in Division Bench and as per roster anticipatory bail applications are assigned to this Court and he needs to work out present matter before this Court, learned advocate for applicant submitted that by way of temporary arrangement HMJ R.M. Joshi is sitting in Division Bench and said arrangement is continued from 04.03.2024 to 08.03.2024. He therefore requested that the matter may be adjourned beyond 08.03.2024. It is unfair on the part of learned advocate for applicant to make such request. It is apparent that he is trying to avoid this Court, as this Court after hearing him on merits on 26.02.2024 expressed disinclination to grant relief. Approach and conduct of learned advocate for applicant is deprecated. Advocates are officers of Court and it is their duty to be fair to the Court. They should not identify with the matter. This Court, therefore, records strong displeasure about the conduct of learned advocate for applicant.

17. After pronouncement, learned advocate for applicant prays for continuation of ad-interim protection granted to the applicant. For the reasons stated in the order, the said prayer is rejected.

[NITIN B. SURYAWANSHI, J.]