

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2274 OF 2024

Akash Navnath Hake ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. M. V. Thorat a/w. Ms. Trisha Chaudhari and Ms. Kiran Singh for Applicant.
Mr. Sagar R. Agarkar, APP for Respondent-State.
Mr. B. B. Patil, API, Wadgaon Police Station, Kolhapur.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 09, 2024

P.C. :

. Heard Mr. Thorat, learned counsel for the applicant and Mr. Agarkar, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0297 of 2024 dated 11.05.2024 registered with Vadgaon Police Station, District - Kolhapur, for offences under Sections 143, 147, 148, 149, 307, 323 and 336 read with Section 120-B of the Indian Penal Code, 1860 (IPC) as also under Section 135 of the Maharashtra Police Act, 1951.

3. The incident in question is said to have taken place on 11.05.2024, wherein the victim suffered brutal assault due to which he was seriously injured and on that basis, the offences have been registered, including under Section 307 of the IPC.

4. The statement of the informant, who is the cousin of the injured victim, shows that the events that occurred on 11.05.2024 are described in two parts. The first part pertains to a meeting held at about 1:30 p.m. for resolving disputes between the two warring groups. The second part

pertains to an assault that allegedly took place at about 3:20 p.m. resulting in injuries to the victim. The description of the said part of the incident does show the presence of the applicant.

5. The learned counsel for the applicant submits that only the presence of the applicant in the second part of the incident is mentioned without any assertion about the applicant carrying a weapon or having indulged in any overt act leading to any injuries to the victim.

6. It is submitted that the investigating authorities, now rely upon the statement of the victim recorded on 14.05.2024, wherein apart from describing the two part incident of 11.05.2024, reference is made to an assault allegedly carried out by the applicant in a casualty room of the hospital where the victim was admitted. It is alleged that the applicant pursued the victim, entered the casualty room and assaulted the victim by means of fists and kicks. It is submitted that this statement is recorded about three to four days after the alleged incident and even in the said statement, no allegation is made against the applicant about use of any weapon.

7. On the other hand, the learned APP submits that the presence of the applicant in the second part of the incident dated 11.05.2024 is very much available on record. Since the FIR invokes provisions pertaining to unlawful assembly, the presence of the applicant is enough to indicate a *prima facie* case against him. It is alleged that the specific overt act attributed by the victim in his statement recorded on 14.05.2024 clearly shows the involvement of the applicant, even after the victim was injured. In the earlier part of the chain of events, reference is made to the injury certificate, which shows injuries suffered by the victim.

8. It is relevant to note, as pointed out by the learned counsel for the applicant, that co-accused Prabhakar Kurane was granted anticipatory

bail by this Court by order dated 24.07.2024 passed in Anticipatory Bail Application No.1523 of 2024. If only the first two parts of the incident of 11.05.2024 are taken into consideration, there is substance in the contention raised on behalf of the applicant that the applicant is similarly situated like Prabhakar Kurane. His mere presence is recorded in the second part of the incident without any use of weapon attributed to him and no overt act also being attributed to him.

9. The distinguishing feature sought to be highlighted by the learned APP is the statement of the victim recorded on 14.05.2024, which pertains to a further incident that is said to have taken place in the casualty room of the hospital where the victim was admitted. It is alleged that the applicant pursued the victim, entered the casualty room and assaulted the victim by way of fists and kicks.

10. The Sessions Court has referred to CCTV footage which *prima facie* shows the presence of the applicant at the hospital and near the casualty room.

11. This Court is of the opinion that the statement of victim is recorded about three to four days after the incident. Recording of statement may be delayed due to the injuries suffered by the victim. Nonetheless, even if the details of the said statement as regards the applicant are taken into consideration, the allegation is about assault by way of fists and kicks in the casualty room. The injury certificate, upon which the learned APP relies, shows injuries inflicted by sharp object. It is to be noted that neither in the second part of the incident that is said to have taken place on 11.05.2024 nor in the assault allegedly launched in the casualty room of the hospital, any weapon is said to be used by the applicant. In fact, in the second part of the incident, at the place where the victim was brutally assaulted, no overt act is also attributed to the applicant. In such circumstances, it is obvious that there is no question

of recovery of any weapon from the applicant. The applicant is ready to co-operate with the investigation and a similarly placed accused person is already granted relief by this Court. Hence, the applicant deserves to be allowed.

12. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with FIR No.0297 of 2024 dated 11.05.2024 registered with Vadgaon Police Station, District - Kolhapur , he shall be released on bail on furnishing PR Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- B. The applicant shall remain present before the investigating officer between 10:00 a.m. and 12 noon on 12.09.2024 and 13.09.2024 and thereafter as and when required by the investigating officer.
- C. The applicant shall co-operate with the investigation and also in the proceedings before the trial Court;
- D. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence;

13. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

14. The application is disposed of.

(MANISH PITALE, J.)