

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 560 OF 2024

Shaikh Aqueel Shaikh Mohd. Shafee ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Sanjeev Kadam, a/w Kishan Chaudhari, for the
Applicant.
Mr. Sujit Sahoo, for the Intervener.
Mr. A. A. Naik, APP for the State.
PI Mr. Sanjay Sanap, Malegaon City Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 15th JULY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant has preferred this application for pre-arrest bail in connection with CR No.15 of 2024 registered at Malvani City Police Station, for the offences punishable under Sections 307, 323, 325, 379, 504, 506, 143, 144, 147, 148 and 149 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 3 read with Section 25 of the Arms Act, 1959.
3. When the application was listed before the Court on 29th February, 2024, this Court was persuaded to grant interim bail observing as under:

“2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 15 of 2024 registered at Malegaon City police station for the offences punishable under sections 307, 323, 325, 379, 504, 506, 143, 144, 147,148,149 read with 34 of Indian penal Code, 1860 and section 25(3) Arms Act, 1959.

3. The first informant lodged report with the allegation that in the year 2020-21 a dispute had arisen over a land situated at Survey No. 214, Near Ali Akbar Hospital, between the applicant and the first informant. Proceedings were instituted in the Civil Court. The first informant further alleged that the applicant had visited the disputed property and threatened to eliminate the first informant.

4. In pursuance of a criminal conspiracy, on 15th January, 2024 the first informant was allegedly accosted in front of Super Market at Mirza Galib Road by two assailants, namely, Wakar Master and Guddu resident of Abbas Nagar, and three unknown persons. He was assaulted by means of iron shock absorber and base ball bat. The first informant sustained grievous injuries on his leg. The assailant Wakar allegedly also fired at the first informant.

5. The learned counsel for the applicant submitted that the first informant had named the applicant as the alleged conspirator on account of the disputes between the parties. At the time of alleged occurrence the applicant was not present. Nor any role has been attributed to the applicant. He has been simply named as the person at whose instance the first informant was allegedly assaulted. Attention of the Court was invited to the copies of the complaints in the civil suits between the parties.

.....

8. Prima facie, from the perusal of the allegations in the FIR, it does not appear that the applicant was present at the time of the alleged occurrence. The role attributed to the applicant is that of being a conspirator. Prima facie, it appears that the first informant has levelled a general allegation that the applicant had visited the disputed property and threatened to eliminate the first informant. The material on record indicates that there have been disputes between the parties since the year 2020-21 and civil proceedings have been instituted.

9. In the circumstances, till the matter is heard after providing an opportunity to the prosecution and the first informant, the liberty of the applicant deserves to be protected.”

4. Mr. Kadam, the learned Counsel for the applicant, submitted that pursuant to the aforesaid order, the applicant has appeared before the Investigating Officer and rendered the necessary co-operation. In the intervening period, the co-accused and the alleged assailants were arrested and have since been released on regular bail. There is no material to indicate that the applicant was the co-conspirator or had otherwise abetted the commission of the alleged offences. The applicant has been roped in on account of the transactions which the first informant had with other persons with regard to the immovable property in respect of which civil proceedings have been filed. Thus, at this stage, the custodial interrogation of the applicant is not at all warranted.

5. The learned APP resisted the prayer for bail. It was submitted that the investigation has revealed that immediately after the occurrence the applicant had called Mansoor, one of the co-accused, who is the nephew of the applicant. The CDR thus establishes the nexus between the applicant and the co-accused. Having regard to the injuries suffered by the injured, the first informant does not deserve the relief of pre-arrest bail, submitted the learned APP.

6. Mr. Sahoo, the learned Counsel for respondent No.2, resisted the prayer for bail. It was submitted that the material on record unmistakably indicate that the applicant was the principal confederate in the conspiracy to eliminate the first informant. The existence of a prior dispute between respondent No.2 - first informant and the applicant is rather incontrovertible. It is in connection with the said dispute, the applicant had instigated his hirelings to perpetrate murderous assault upon the first informant (R2). Attention of the Court was invited to the fact that the supplementary statement of the first informant reveals the commission of even grave offences like dacoity armed with deadly weapons. Therefore, the applicant does not deserve to be enlarged on pre-arrest bail.

7. I have given careful consideration to the rival submissions. This Court has already recorded a *prima facie* view in the matter. Evidently, two suits have been instituted in respect of a property dispute, which appears to be the genesis of the alleged offences. First, the brother of the first informant alongwith one Vitthal Barve, seem to have instituted Special Civil Suit No.2/2019 in respect of the land bearing Plot No.133 situated at Survey No.214/1/2/133

against Dnyaneshwar Shah and others seeking specific performance of an alleged Agreement for Sale dated 7th September, 2018. The applicant claims that the applicant and other 13 co-purchasers had purchased the subject land from Rameshkumar Virchand Sheth under a registered Sale Deed dated 9th October, 2023. In respect of the said Sale Deed, the defendants in Suit No.2/2019 seem to have instituted Special Civil Suit No.533/2023 against the applicant, his co-purchasers and the vendors seeking a declaration that the said Sale Deed is null, void and illegal.

8. The first informant alleged that after the first informant instituted the proceedings in Civil Court the applicant had visited the subject premises and gave threat of dire consequences in the presence of Imamuddin, the cousin of the first informant. The assault on the first informant is sought to be co-related with the said dispute.

9. It is pertinent to note that, in the reply filed on behalf of the prosecution before the Court of Session opposing the prayer for pre-arrest bail it was, *inter alia*, contended that the first informant had a business dealing with Khalid Haji, the nephew of the applicant, and the latter had defrauded the first informant to the tune of Rs.28,00,000/-. It is further

alleged that the first informant had a chit fund transaction (*bhishi*) with the applicant and after the first informant deposited a sum of Rs.2,50,000/- each for 16 months, the applicant had refused to pay the amount of chit fund to the first informant. Thus on 16th January, 2022 the first informant had attempted to commit suicide by consuming pesticide.

10. The aforesaid material, *prima facie*, indicates that the diverse motives were sought to be attributed to the applicant to hatch a conspiracy to eliminate the first informant. *Prima facie*, it appears that the relations between the applicant and the first informant were strained bordering on enmity. This inimical nature of the relationship is required to be kept in view.

11. Evidently, the applicant was not present at the time of the alleged occurrence. The involvement of the applicant as a conspirator is sought to be substantiated on the basis of CDR. It was urged that, under seven minutes of the alleged occurrence, the applicant had called Mansoor, the nephew of the applicant. *Prima facie* it does not appear that the prosecution banks on the transcript of the conversation. Having regard to the relationship between the applicant and

the Mansoor, the fact that the applicant had called Mansoor after the alleged occurrence does not, by itself, incriminate the applicant. Moreover, as noted above, multiple motives were sought to be attributed to the applicant to conspire to cause harm to the first informant.

12. Furthermore, the alleged assailants were arrested and have since been released on regular bail. In this backdrop, at this distant point of time, the custodial interrogation of the applicant does not seem to be warranted to facilitate further investigation. I am, therefore, impelled to make the order of interim bail absolute.

13. Hence, the following order:

: O R D E R :

- (i) Order of interim bail dated 29th February, 2024 is made absolute on the terms and conditions incorporated therein.
 - (ii) In addition, the applicant shall appear before the Investigating Officer as and when directed.
 - (iii) The applicant shall regularly attend the proceedings before the jurisdictional court.
- Application disposed.

[N. J. JAMADAR, J.]