

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1876 OF 2024

Shaikh Rafique Shaikh Afjal	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Mahendra N. Sandhyanshiv for Applicant.

Mr. Shahaji Shinde, Special PP a/w. Mr. Kiran C. Shinde for Respondent-State.

CORAM : MANISH PITALE, J.

DATE : JULY 24, 2024

P.C. :

. Heard Mr. Sandhyanshiv, learned counsel for the applicant and Mr. Shinde, learned special public prosecutor for the respondent-State.

2. In this application, the applicant is seeking protection from arrest in connection with FIR No.0091 of 2024 dated 09.05.2024 registered with Azad Nagar Police Station, District - Nashik Rural, for offences under Sections 143, 147, 148, 149, 307, 327, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC); Sections 3 and 25 of the Arms Act, 1959; and Section 37(1)(c) of the Maharashtra Police Act, 1951.

3. The FIR was registered on the basis of statement given by the informant, who claims to have been assaulted by the accused persons by means of sword, axe and chopper. The statement of the informant also shows that one of the co-accused persons had a *katta* in his hand.

4. The learned counsel for the applicant submits that even if the statement leading to registration of the FIR is taken into consideration, no overt act is attributed to the applicant. It is submitted that even the presence of the applicant, when the actual assault is said to have taken

place, is doubtful and his name is mentioned only after the informant along with his friend went inside a house and they were looking at the accused persons from the window, while reaching out to the police. It is further submitted that the Sessions Court had rejected the anticipatory bail of the applicant, solely on the ground of criminal antecedents, without appreciating that in one of the cases, where offence under Section 395 of the IPC was also registered against the applicant, he has been acquitted. The other offences pertain to Maharashtra Prevention of Gambling Act, 1887 etc. It is submitted that the applicant is ready to co-operate with the investigation and therefore, this Court may favourably consider the present application.

5. On the other hand, learned special public prosecutor has vehemently opposed the present application. It is submitted that the applicant is a terror in the local area, against whom other offences are also registered. It is submitted that the presence of the applicant is clearly established on the basis of the statement of the informant and since specific role is attributed to the co-accused persons, who have used deadly weapons and Section 149 of the IPC is also invoked, this Court may not show any indulgence to the applicant.

6. This Court has considered the material on record, particularly the statement of the informant, leading to registration of the FIR. Reading of the same shows that when the assault is described by the informant, he has named only the four co-accused persons, specifically alleging the nature of weapons handled by each of the four co-accused persons and attributing specific overt acts to each one of them. There is no reference to the applicant at this stage where the informant is describing the assault.

7. The applicant's name is mentioned in the statement of the informant when he describes the subsequent portion of the incident

wherein the informant and his friend took shelter in a house and reached out to the police. While peeping from the window of the house, it is alleged that the informant saw that the applicant was also present along with the co-accused persons.

8. Considering the statement leading to registration of the FIR, this Court finds that *prima facie* case is made out by the applicant to claim that no specific over act is attributed to him. There is no mention of any weapon being used by the applicant and there is no allegation of the applicant having assaulted the informant in any manner.

9. As regards the criminal antecedents of the applicant, upon which the Sessions Court has placed much reliance, it is brought to the notice of this Court that, as on today, the applicant has been acquitted in C.R.No.90 of 2013, which pertained to serious offences, including offence under Section 395 of the IPC. The remaining cases pertain to minor offences, including offences under the Maharashtra Prevention of Gambling Act, 1887. In view of the above, this Court is inclined to allow the present application, particularly because the applicant has undertaken to co-operate with the investigation.

10. 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.0091 of 2024 dated 09.05.2024 registered with Azad Nagar Police Station, District - Nashik Rural, he shall be released on bail on furnishing PR Bond of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount;
- B. The applicant shall appear before the investigating officer on 26.07.2024 between 10:00 a.m. and 12 noon and thereafter,

as and when called by the investigating officer. He shall co-operate with the investigation;

- C. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

11. In case any of the aforesaid conditions are violated, the present order would be liable to be cancelled. 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.

12. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab