

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2064 OF 2024

Aarti Shankar Gavhale ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. A.P. Mundargi, Senior Counsel i/b. Mr. Jayant Bardeskar, Advocate for applicant.

Mr. Mayur S. Sonawane, APP for respondent-State.

Mr. Gajanan R. Cheke, API, Baramati City Police Station, District Pune.

CORAM : MANISH PITALE, J.

DATE : 07th AUGUST, 2024

P.C. :

. Heard learned Senior Counsel for the applicant and the learned APP for the respondent-State.

2. The applicant has approached this court apprehending her arrest in connection with FIR No.0108 of 2023 dated 03.03.2023, registered at Baramati City Police Station, District Pune City, for offences under Sections 307, 120-B, 143, 144, 147, 148, 149, read with Section 34 of the Indian Penal Code, 1860(IPC) and under Section 4 and 25 of the Arms Act.

3. There are total six accused persons in the present case. Four accused

persons are still behind bars while co-accused Shankar Gavhale i.e. husband of the applicant was granted regular bail by order dated 3.7.2023 passed by the Sessions Court. The applicant had also applied for anticipatory bail but her application was rejected by the Sessions Court by an Order dated 12th February 2024.

4. In the present case, FIR was registered on the statement given by the first informant on 2nd March 2024 as regards an incident where the victim was allegedly assaulted by means of dangerous weapons by the four co-accused persons who are still behind bars. The allegation against the applicant and her husband was that they had exhorted the co-accused persons to carry out the assault on the victim.

5. The learned Senior Counsel appearing for the applicant submits that in the present case, after registration of the FIR on the basis of the statement of the first informant, during the course of investigation itself it came to light that husband of the applicant was not present at the spot of the incident and this was further clear from the supplementary statement of the first informant recorded on 17.03.2023. Throughout, it was the case of the applicant that the applicant was also not present at the place of the incident and in that light several representations were made to the Senior Police Officers. Pursuant thereto, the statements of some of the witnesses were recorded again and they clarified that they had not made any allegations against the applicant and her husband in respect of the incident in question.

6. Therefore, the Learned Senior Counsel for the applicant places reliance on the material that has come on record alongwith the charge-sheet, as well as statements subsequently recorded by the police to contend that prima facie case is made out by the applicant. In any case, considering the

allegations made against her, her custody may not be necessary. It is submitted that the applicant undertakes to cooperate with the investigation.

7. On the other hand, learned APP submits that during the course of investigation and recording of supplementary statements, it appeared that the husband of the applicant was not present at the place of the incident, but in the charge-sheet, it has been specified that he and the applicant had indeed exhorted the co-accused persons to carry out the brutal assault. On this basis, it is submitted that since the applicant has not joined investigation, indulgence may not be shown to the applicant.

8. This Court has considered the material on record, including the compilation of documents handed over by the learned Senior Counsel for the applicant, during the course of arguments.

9. It is claimed on behalf of the applicant that pursuant to certain representations made to Senior Police Officers, statements of some of the witnesses were again recorded post such representations. It is evident from such statements that the said witnesses have taken a somersault and they have contradicted their own versions that were recorded during the course of investigation and while charge-sheet was filed.

10 It is surprising and as correctly noted by the Sessions Court, the subsequent statements and affidavits filed by the said witnesses appear to completely exonerate the applicant. It is a matter of record that such subsequent statements have been recorded only after representations were made by the applicant.

11. Considering the fact that the applicant made such representations

during the course of the investigation and subsequent to the filing of the charge-sheet, while she was not taken into custody, this Court is ignoring the statements recorded subsequently. In that light, learned Senior Counsel for the applicant made an endeavour to demonstrate on the basis of the material on record with the charge-sheet, as to why the present application can be favourably considered. This Court has considered the said submissions.

12. On a perusal of the statement of the first informant, leading to registration of the FIR, it appears that according to her, the applicant alongwith her husband exhorted the co-accused persons, who were already armed, to carry out the assault on the victim. The role was specifically stated and presence of both the applicant and her husband was asserted on behalf of the first informant.

13. Fifteen days later, the supplementary statement of the first informant was recorded wherein the version underwent a significant change. In the supplementary statement, the first informant stated that the applicant loudly shouted at the time of the incident that her husband had called her on phone and said that the family of the first informant is not to be spared and in pursuance of such an exhortation, the co-accused persons carried out the brutal assault. It is significant to note that in the charge-sheet, while stating the brief facts, it has been alleged that the phone call allegedly made by the husband of the applicant was put on speaker phone and thereafter exhortation followed, which in turn was followed by the brutal assault.

14. Prima facie, this Court finds contradictions in the version of the first informant itself. The nature of exhortation, as also the complete absence of the husband of the applicant on the spot of the incident as per

supplementary statement of the first informant gives credence to the contention raised by the applicant that there could be said to be a possibility of false implication.

15. It is a different matter that subsequently the informant and even other witnesses have done a complete volte face and they have given statements to the effect that neither the applicant nor her husband were present at the place of the incident. But, even the material on record alongwith the charge-sheet appears to be showing certain contradictions, which do create a doubt about the exact role of the applicant at the place and time of incident. Even otherwise, the only overt act alleged against the applicant is an exhortation. Therefore, it cannot be said that the custody of the applicant is necessary for recovery of any weapon or otherwise. The co-accused persons who allegedly used dangerous weapons to carry out the brutal assault are already behind bars. The husband of the applicant has been granted regular bail on 3.07.2023, taking note of the aforesaid contradictions. So long as the applicant is ready to cooperate with the investigation, the present application can be allowed.

16. In view of the above, the application is allowed on the following terms.

- (a) In the event the applicant-Aarti Shankar Gavhale is arrested in connection with FIR No.0108 of 2023 dated 03.03.2023, registered at Baramati City Police Station, District Pune, she shall be released on bail on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial court;
- (b) the applicant shall appear before the investigating officer on 09.08.2024 between 10:00 a.m. and 12:00 noon and thereafter as and when required by the investigating officer;

- (c) the applicant shall co-operate with the investigation, including presenting herself for medical examination and also depositing his mobile phone before the investigating officer;
- (d) the applicant shall not influence the informant, witness or any person concerned with the case and she shall not tamper with the evidence.

7. Needless to say, violation of any of the above conditions can lead to cancellation of bail. The observations made in this order are limited to consideration of this application.

8. The application is disposed of accordingly.

(MANISH PITALE, J)

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SANDEEP
TALWALKAR

Digitally signed by
ARUNA SANDEEP
TALWALKAR
Date: 2024.08.07
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