

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2927 OF 2024

Deepak Malame

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Raviraj R. Paramane a/w Mr. Deva L. Shinde, for Applicant.
- Mr. Tanveer Khan, APP for Respondent.
- Mr. V.V. Dhurve, PSI, Alephata Police Station, District Pune.

CORAM : MANISH PITALE, J.

DATE : 11th NOVEMBER, 2024.

P. C. :

1. Heard, Mr. Paramane, learned counsel for the applicant and Mr. Khan, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with First Information Report No.0234 of 2024, dated 28.07.2024, registered at Police Station Alephata, District Pune, for offences under Sections 118(2), 189(2), 190, 191(2), 193(3), 324(4) and 324(5) of the Bharatiya Nyaya Sanhita, 2023 (BNS).

3. This Court is informed that subsequent offence under Section 109 of the BNS was also added, which pertains to attempt to murder.

4. In the present case, there are 5 persons, who are specifically named in the FIR and it is stated that there were additionally 3 to 4 persons

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accompanying the named accused persons, who carried out the assault on the informant/ victim. A perusal of the FIR shows that the incident occurred on 27.07.2024, at about 10:00 p.m. and the FIR was registered on 28.07.2024 at about 03:16 p.m.

5. The learned counsel for the applicant, at the outset, relies upon order dated 15.10.2024, passed by this Court in Anticipatory Bail Application No.2779 of 2024, wherein co-accused Avinash Tukaram Punde, was granted relief of anticipatory bail. It is submitted that the role attributed to the applicant is similar to that of the aforesaid co-accused person and that the specific allegation of assault by using iron rod is against another accused person i.e. Santosh Gaikwad. It is submitted that this Court may consider allowing the present application on the ground of parity, although the said co-accused person Avinash Tukaram Punde was not specifically named in the FIR and his name is covered under the general allegation of 3 to 4 unknown persons assaulting the victim alongwith the co-accused persons.

6. On the other hand, the learned APP submits that since the applicant is specifically named in the FIR, he cannot claim parity. It is further submitted that the applicant has two criminal antecedents and in one of the cases he is facing prosecution under Section 302 of the IPC.

7. This Court has considered the rival submissions. In the order

granting anticipatory bail to co-accused Avinash Tukaram Punde, this Court observed as follows :

- “7. *A perusal of the statement, leading to registration of the FIR, shows that the applicant is not named as one of the assailants. A general statement is made that there were 3 to 4 persons accompanying the 5 named accused persons at the date and time of the incident. The statement of the informant also shows that the assault on the head of the informant by means of an iron rod is attributed specifically to co-accused Santosh Gaikwad, while the role of the other persons present at the time of the incident, is limited to abusing and assaulting by way of fists and kicks. The name of the applicant featured for the first time on the next date of the registration of the FIR i.e. on 29.07.2024 in the supplementary statement of the informant. There is substance in the contention raised on behalf of the applicant that since the informant as well as the applicant belong to the same village and the informant also knew the pet name of the applicant, there was no reason for him not to specifically name him in the statement that led to registration of the FIR.*
8. *In any case, the role attributed to the accused persons other than Santosh Gaikwad, is assault by way of fists and kicks. The serious injuries suffered by the informant are attributable to the role of the said accused person.”*

8. In the present application, there is no doubt about the fact that the applicant has been named in the FIR, unlike co-accused Avinash Tukaram

Punde, whose name did not specifically featured in the FIR. But, it cannot be ignored that the allegation against the applicant herein as regards assault on the victim is identical to that made against other co-accused persons. It is alleged that the applicant also assaulted by way of fists and kicks. The FIR also shows that specific allegation with regard to assault by using iron rod is against co-accused Santosh Gaikwad. Therefore, this Court is of the opinion that the applicant is justified in relying upon the order granting relief to the co-accused Avinash Punde.

9. As regards criminal antecedents, it would be necessary to first consider the overt act attributed to the applicant in the present case while considering the instant application rather than placing emphasis on criminal antecedents of the applicant. In any case, this Court is informed that the applicant was released on bail in the context of the earlier two criminal cases.

10. This Court is inclined to allow the present application by imposing stringent conditions. It is informed that the victim as well as the accused persons, including the applicant, are residents of Taluka Parner, District Ahmednagar, while the FIR has been registered in District Pune. Therefore, this Court is inclined to impose specific stringent condition against the applicant, while granting him relief.

11. In view of the above, the application is allowed in the following

term :

- (A) In the event the applicant is arrested in connection with FIR No.0234 of 2024, dated 28.07.2024, registered at Polic Station Alephata, District Pune, he shall be released on bail, on furnishing PR Bond of ₹ 25,000/- 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 on 13th November, 2024, between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicant shall not enter the jurisdiction of Taluka Parner District Ahmednagar, till filing of the charge-sheet.
- (D) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

13. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants 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.)