



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 73/2024

Gita d/o Bhaskar Shejwal V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Mardikar, Senior Counsel a/b Mr. Sameer Sonwane, counsel for the applicant.

Mr. V.A. Thakre, APP for the non-applicant/State.

Mr. D.V. Chauhan, counsel for assist to prosecution./intervenor.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/02/2024.

1. Apprehending arrest at the hands of Police in connection with Crime No. 07/2024 registered under Section 307 of the Indian Penal Code, 1860 and Sections 3, 25 of the Arms Act, 1959, the applicant who is the R.T.O. Officer approached this Court for grant of pre-arrest bail.

2. The applicant is apprehending arrest at the hands of Police as crime is registered on the basis of report lodged by Suhas Daulatrao Chaudhary, working as Police Inspector, Gramin Branch Unit No.1, Nagpur City, wherein he alleged that at the house of Motor Vehicle Inspector - Sanket Gaikwad, the incident of firing of the bullet has taken place, but he has not reported the said incident to the authorities correctly and stated that when he was preparing himself to join the duties by wearing the uniform and placing his revolver attaching to his uniform, at that time, a rat ran over on his leg and the revolver fallen on the ground and accidentally the bullet was fired, due to which the bullet hit his both the legs and

sustained the injuries. On the basis of his statement, no crime was registered and subsequently, opinion of the expert was sought and it revealed that, such type of injury is not possible due to accidental firing of bullet. It is only possible, if there is any defect in the mechanism of the said pistol. On the basis of the said opinion, the investigating agency has investigated the matter and the involvement of the present applicant is revealed and therefore, the crime is registered against the present applicant.

3. Learned Senior Counsel Mr. A.S. Mardikar for the applicant submitted that in fact on the date of incident on 07/05/2022, the present applicant has received the phone call of the injured – Sanket Gaikwad and therefore, she had been there to assist him and it revealed that the injured Sanket Gaikwad was preparing himself to attend the office and placing his revolver by wearing the uniform, the gun fallen on ground accidentally, and the bullet was fired accidentally thereafter, the said accident was promptly reported to the Police Station Dhantoli. The Police Station, Dhantoli registered MLC No. 899/2022 and investigated the matter. Thereafter, MLC case was transferred to Police Station Bajaj Nagar, Nagpur. Shri Sanket Gaikwad was admitted in Getwell Hospital, Nagpur which is situated at Dhantoli Nagpur. Thereafter, as nothing revealed in the investigation, the closer report was prepared. After two years, the investigating agency reopened the matter and the present applicant is implicated falsely and maliciously in the alleged offence as she has made complaint against the seniors of sexual harassment.

4. He further submitted that as far as the investigation part is concerned, prosecution relied on the expert opinion, but the expert opinion nowhere ruled out the possibility of firing of the bullet accidentally. It only shows that the bullet can be fired accidentally, if there is defect in the mechanism of the pistol. So, defect in the mechanism of the pistol cannot be ruled out. He submitted that FIR is registered after two years against the unknown person. As the applicant has received the notice, she is apprehending arrest at the hands of Police. He submitted that the alleged incident has taken place at 6.50 a.m., immediately the statement of the injured was recorded at 7.50 a.m. The possibility of firing of the bullet accidentally cannot be ruled out. The statement of Security Guard is also recorded after two years. He urged that the prosecution relied upon Section 106 of the Indian Evidence Act, 1872 (for short 'the Act of 1872') but before applying Section 106 of the Act of 1872, the prosecution has to travel from Section 101 to 105 of the Act, 1872. He further submitted that moreover, the pistol is already recovered and forwarded to the analysis, the custodial interrogation of the applicant is not required and therefore, the applicant be released on pre-arrest bail.

5. In respect of his contention, he placed reliance on some graphics to canvas that as per the opinion of the expert, the said bullet was fired from a long distance, but if the bullet is fired from a long distance, such type of injury is not possible and therefore, the contention of the prosecution showing involvement of the present applicant by alleging that the bullet was fired from the distance is not sustainable.

6. In support of his contention, he placed reliance in the cases of *Sabitri Samantaray Vs State of Odisha*¹, *Ramachandran Vs R. Udhayakumar and others*², *Sindhu Janak Nagargoje Vs The State of Maharashtra and others*³, and *Mithabhai Pashabhai Patel Vs State of Gujarat*⁴ he submitted that on the basis of the above decision that the investigation after the closer of report is not permissible and in view of that the applicant can be protected by granting anticipatory bail in the event of his arrest.

7. Per contra, learned APP strongly opposed the application on the ground that initially the inquiry was conducted by Police Head Constable Shri Patankar. He recorded the statement of the witnesses and filed closer report and submitted the Police Inspector, Police Station, Bajaj Nagar, Nagpur. Though the inquiry was closed on 14/11/2022, during scrutiny, it was found that there is a contradiction in the statement of the witnesses recorded during the course of inquiry and the medical documents. Inquiry revealed that incident is neither the case of accidental firing nor a case of self inflicted injury. It is evident that the said injury has been caused due to bullet firing by an unidentified accused. Hence, the FIR under Sections 307, 201 of Indian Penal Code and Section 3, 25 of the Arms Act came to be registered.

8. He further submitted that detailed statement of Dr. Sudhir Deshmukh is recorded as well as the analysis of CDR

1 2022 SCC OnLine SC 673

2 (2008) 5 SCC 413

3 SLP (Cri.) No. 5883/2020, dt. 8.8.2023.

4 (2009) 6 SCC 332.

Report shows that there was no call between the Sanket Gaikwad and his wife Komal Gaikwad. Thus the entire story narrated by the applicant is contradictory. The investigating agency has also ascertained the expert opinion from the hospital, wherein the injured was treated and it revealed that such type of injuries are not possible in an accidental firing of the bullet. No gun powder was found on the legs of the injured. All these circumstances falsify the story narrated by the applicant. The statement of one of the Security Guard shows the presence of the present applicant at the spot of incident at the time of incident. All these facts are sufficient to connect the applicant with the alleged offence and there are criminal antecedents against her. The applicant is not a laymen or the lay citizen, she is the R.T.O. Officer and it revealed during the investigation that she is misusing her powers. In view of that, her custodial interrogation is required and therefore, application deserves to be rejected. During his submission, he taken me through all the investigation papers and pointed out that there is a prima-facie material against the present applicant.

9. I have perused all the investigations papers. On perusal of the investigation papers it revealed that, the incident has taken place on 07/05/2022 at 6.45 a.m. and after the said incident it was reported to the Police and it was portrayed that the bullet was fired accidentally. The said inquiry was conducted by the Police Head Constable. Relying upon the statement of the injured, he has filed the closer report and the said closer report was forwarded to the Bajaj

Nagar Police Station. The investigating agency has sought the opinion of the Armour Department. The same was given by the in-charge of that department which is reproduced below as under:-

महोदय, वरील संदर्भान्वये आपल्या कडून प्राप्त पत्रानुसार आमचे असे मत आहे की, पुर्ण ट्रिगर दाबल्याशिवाय हॅमर आपल्या शिल्ड (झिरी) मधुन बाहेर येऊ शकत नाही. कुठेतरी पडल्यावर व हॅमर वर ठोकर लागल्याने हॅमर एकतर पुर्णपणे मागे जाऊन थांबणार किंवा जर तो अर्धवट मागे जाऊन पुन्हा पुढे आला तर हॅमर हा सिलेंडर मध्ये असलेल्या राऊंड च्या परक्युशन कॅप वर ठोकर मारु शकत नाही, म्हणुन अश्या परिस्थितीत फायर होण्याची शक्यता नाही.

तरी सुध्दा एखाद्या विषम परिस्थितीत मॅकॅनिझम मध्ये बिघाड झाल्याने राऊंड फायर झाला असेल तर ही वेगळी गोष्ट आहे. असे आमचे मत आहे.

10. Moreover, not only the opinion of the Armour Workshop of the Police Department is sought by the investigating agency but they have also sought the opinion of the medical officer wherein the injured was treated i.e. Getwell Hospital. The inquiry report was sent to the medical officer – Getwell Hospital, Dhantoli Nagpur by making specific query regarding the nature of the injury, in what circumstances, the said injury can be caused and from which distance bullet may have fired and the opinion was given by the Medical Officer Dr. Sudhir M. Deshmukh on 12/01/2024.

Query No.1- The Medical Officer opined that the bullet was fired from left side from lateral side so it entered from left and exited out from left leg and entered into right leg from medial side.

Query No.2: Left leg Lacerated wound 2cm x 1cm x 1 cm as entry and exit wound approximately. Right leg- Entry wound 1 cm x 2 cm medially and she has attached the diagram.

Query No.4: He mentioned that bullet removed from right leg was handed over to Mr. Sanket Gaikwad and Bharat Tukarm Gaikwad.

Query No. 5: He opined that the fire was from long distance and;

Query No. 6: He opined that we could not found gun power or black powder.

Query No.7 : He opined while admitting he was wearing short-pant, watch, ring two in number and yellow ring in wrist and all were handed over to relatives as per record.

Query No. 8 :- He opined that, bullet has come from left side of patient and probably he may be not in standing position, patient may be in lying down position.

11. Thus, from this opinion it reveals that when the bullet was fired the injured was not in a uniform. It further reveals that no black powder or gun powder was found on his person and the bullet was fired from some distance. It further reveals that as per the opinion of the medical officer, he may not be in a standing position and he may be in a lying position.

12. Now, these circumstances are to be considered in the light of the various statements recorded by the investigating officer during the investigation. Admittedly, the first statement of injured was recorded wherein he stated that the bullet was fired accidentally, when he was preparing himself for attending the duty and was placing his revolver with his uniform, at that time, the pistol was fallen on ground and bullet was fired accidentally. The medical opinion given by the doctor shows that when he was admitted in the hospital, he was not in the uniform but he was wearing shorts and the T-Shirts. Thus, the statement of the injured appears to be fallacious. During the investigation, it reveals that at the relevant time the wife of the injured was not at home and as per the statement of the injured he has called the present applicant at the spot of incident and therefore, she came there but the circumstances which brought on record during the investigation shows that, the statement of one Roshan Mahipalsingh Uikey was recorded by the investigating officer who has witnessed presence of the present applicant at the house of the injured on earlier date i.e. on 06/05/2022 at about 12.00 a.m. in the midnight. His statement shows that when he was on duty, he witnessed that at about 12.00 a.m. the present applicant came to the house of the Sanket Gaikwad and not seen her moving from the place and early in the morning, he heard the noise, therefore, he immediately went to the spot and present applicant disclosed him that glass was broken and she immediately asked him to leave the place.

He also witnessed the injured Sanket Gaikwad in an injured condition.

13. Thus, the statement tells the another aspect of the story narrated by the present applicant. While considering the genuineness of the statement made by the present applicant that she had received telephonic call from the injured Sanket Gaikwad is also ascertained by the investigating agency by collecting the CDR Report. As per the CDR Report, no phone call was received by her from the injured Sanket Gaikwad. The CDR Report collected during the investigation shows the mobile number of present applicant is 9823515121, from which on 07/05/2022 the calls were made to Virsen, Rajvardhan, Vijaysingh Chavhan and Jyoti Chavhan. From CDR nowhere reflects that any phone call made by her to the Sanket Gaikwad or she has received any phone call from the Sanket Gaikwad. As per the contention regarding phone call to the Komal Gaikwad is concerned, it also nowhere reflects that she has made any phone call to the wife of the injured i.e. Komal Gaikwad. Thus, the contention raised by the present applicant that she had been to the spot of incident as she received the phone call of Sanket Gaikwad is falsified by the circumstances.

14. Though learned Senior Advocate Mr. A.S. Mardikar submitted that at this stage, the prosecution has to show that the circumstances are sufficient to implicate the present applicant in the alleged offence, but the prosecution cannot take assistance of Section 106 as the prosecution has to first

stand on its own footing, on the basis of Section 101 to 105 of the Indian Evidence Act. Admittedly, at this stage the entire evaluation of the material is not required. The court has to only see whether the prima-facie case is made out against the present applicant or not.

15. Learned Senior Counsel further placed reliance on the decision of **Ramachandran (supra)** wherein the Hon'ble Apex Court dealt with the issue of further investigation. In ***Mithabhai Pashabhai Patel and others (supra)*** also the Hon'ble Apex Court has dealt with the issue regarding whether with the change of an investigating authority, police custody of the accused on remand can be sought for, although cognizance of the offence had already been taken which was the portion involved. In **Sindhu Janak Nagargoje (supra)**, wherein the reference of the judgment of the "***Lalita Kumari Vs State of Uttar Pradesh and others reported in (2014) 2 SCC 1***", is referred wherein the Hon'ble Apex Court dealt with the aspect whether the registration of the FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Hon'ble Apex Court laid down the guidelines when the registration of the FIR is mandatory. Thus, all these decisions are not directly connected with the issues involved in the present application.

16. Learned APP has rightly pointed out that the considerations for grant of anticipatory bail are different than that of grant of bail under Section 439 of the Code of Criminal Procedure. He placed reliance in the case of ***Kishor***

Vishwasrao Patil Vs Deepak Yashwant Patil and another⁵ , wherein the Hon'ble Apex Court has dealt with the issue regarding the grant of pre-arrest bail and by referring the judgment of ***P. Chidambaram vs Directorate Of Enforcement⁶***.

“69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 of CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights

⁵ Cri. Appeal No.905.2022 dt. 20.5.2022

⁶ (2019) 9 SCC 24.

conferred upon the appellant under Article 21 of the Constitution of India.

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In *State Vs Anil Sharma* (State Vs Anil Sharma, (1997) 7 SCC 187; 1997 SCC (Cri) 1039], the Supreme Court held as under; (SCC p. 189, para 6)

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das Vs State of W.B.* (*Adri Dharan Das vs State of W.B..* (2005) 4 SCC 303; 2005 SCC (Cri) 933], it was held as under : (SCC p. 313, para19)

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

76. In *Siddharam Satlingappa Mhetre vs State of Maharashtra* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694; (2011) 1 SCC (Cri) 514], the Supreme Court laid down the factors and parameters to

be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre Vs State of Maharashtra, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar* [*Jai Prakash Singh Vs State of Bihar*, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468], the Supreme Court held as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enrope in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* [D.K. Ganesh Babu V. P.T. Manokaran, (2007) 4 SCC 434: (2007) 2 SCC (Cri) 345], *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* [State of Maharashtra V Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176] and *Union of India v. Padam Narain Aggarwal* [Union of India Vs Padam Narain Aggarwal, (2008) 13 SCC 305: (2009) 1 SCC (Cri) 1.])”

17. By referring the earlier decision of the Hon’ble Apex Court held in the case of *Sushila Agrawal and others vs State*

*of (NCT of Delhi) and Another*⁷, the Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held;-

“92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

18. Thus while granting pre-arrest bail, the Court is under obligation to ascertain the nature of the offence and the availability of the accused for the investigation purpose, the punishment provided for the alleged offence and the apprehension regarding tampering of the witness. Thus, para-meters for grant of anticipatory bail in a serious offence are required to be satisfied and while granting such relief, the Court must record the reasons therefore. The anticipatory bail can be granted only in exceptional circumstances when the Court is prima-facie of the view that applicant has falsely been involved in the crime and would not misused his liberty.

7 (2020) 5 SCC 1

19. The guidelines laid down by the Hon'ble Apex Court, the factors and the parameters to be considered while dealing with the anticipatory bail. Admittedly, in the present case, the nature and gravity of the offence is of a serious nature. The exact role of the present accused is reflecting from the investigation papers even at this stage.

20. Moreover, the actual genesis of the incident was initially concealed not only by the present applicant but the injured also and therefore, the investigation regarding the involvement of the person who actually fired the bullet is required and therefore, custodial interrogation of the present applicant is also required. The involvement and the accusation of the present applicant is revealed from the investigation papers and therefore, it is not a fit case wherein the discretion is to be used in favour of the present applicant. The power under Section 438 of the Code of Criminal Procedure, 1973 being an extra ordinary remedy has to be exercised with caution. Considering the fact that, the present applicant who is serving as an R.T.O. Officer and her involvement in a offence like the present one is admittedly a serious one. The role which reflects from the investigation papers, prima-facie, shows the case is made out against her. In view of that, application deserves to be **rejected**. Accordingly, I proceed to pass the following order:

The application is hereby **rejected**

[URMILA JOSHI-PHALKE, J.]