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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1309 OF 2025

VAIBHAV DIGAMBER NIKAM AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal, Advocate for the Applicants

Mr. A. M. Phule, APP for the Respondent/State

Mr. P. D. Bachate, Advocate for the Informant

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CORAM : ADVAIT M. SETHNA, J.

DATE : 12 AUGUST 2025

P. C. :

1. Heard learned Advocate for the Applicants, learned APP for the State and learned Advocate for the Informant.

2. The present proceedings relate to Crime No.0108 of 2025 registered by the Dondaicha Police Station, District Dhule. The FIR is lodged 28 May 2025 at 4.36 hours. The alleged offences are under Sections 109, 309(4), 115(2), 352, 351(2), 351(3) and 3(5) of the Bhartiya Nyaya Sanhita, 2023 and under Sections 3, 4 and 25 of the Arms Act, 1959. The occurrence of the offence is on 27 May 2025. There are three accused persons named in the FIR out of which accused Nos.2 and 3 are the Applicants before this Court. The Informant is one Rahul Nandkumar Patil.

3. Heard the learned Advocates for the parties and with their assistance, I have perused the FIR and the record available with the Court.

4. It appears from the FIR that the Informant lodged Report in the said Police Station on 28 May 2025 for an incident which occurred on 27 May 2025. On the said date, the said Applicants along with accused No.1 had gone to the place of the premises of the informant. They intended to disconnect and break the water connection taken by the Informant. Such was informed by the witness Pratap Narayan Koli to the informant. Therefore, they went at the said place and inquired from the Applicants and accused No.1 about the cause of such disconnection. The Applicants/their sons and the accused No.1 threatened and assaulted the Informant. The accused No.1 kicked the Informant on his private parts. Then, his friend one Rahul patil came to rescue the Informant. At that time, the accused No.3 i.e. Swapnil and accused No.1 beat the said Rahul Patil with fist blows who was asked to leave the place. Thus, Rahul Patil fled away and started shouting loudly. At that time, the accused No.2 assaulted the Informant on the stomach and also hit the Informant and also beat the Informant on his chest by fist blows. The said accused No.2 tried to give a blow of knife to the Informant by taking the knife out from his pocket. The Informant evaded such knife blow, and the accused No.3 i.e. Swapnil took out a pistol and aimed at the Informant. Thus, the Informant and his friend Rahul Patil started shouting for help and people residing nearby started gathering there. On seeing this, the accused No.1 along with accused Nos.2 and 3 fled away from the spot. The FIR also notes that the

accused No.1 snatched the gold chain of about 50 gms around the neck of the Informant and threatened to kill the Informant. It is in such circumstances that the Informant lodged the complaint and the FIR thus, came to be registered.

5. The contents of the present complaint / FIR under consideration would first reveal that the incident dated 27 May 2025 reflects attempt to murder / kill the informant and the witness first by assault by fist kick blows, then by knife by Accused Nos 1 and 2 which is recovered. The pistol used by Accused No 3 with an intent to kill the informant as noted in the FIR is yet to be recovered. The gold chain snatched by the Accused No 1 from the informant's neck is also to be recovered. Thus, it appears that the said incident as noted in the FIR *per se* is not disputed and the investigation is at the nascent stage.

6. Mr. Sapkal Ld. Senior Counsel for the Applicants would urge that the genesis of the disputes between the accused and informant is civil in nature. He would place due emphasis on the order of this Court dated 8 July 2025 enlarging the Accused No. 1 on regular bail. Such observations according to him would cover this Application as well. Mr. Phule Ld APP would on the other hand submit that the said Order of this Court was passed in regular bail after arrest of the Accused No 1. It is trite law that the parameters of regular and pre arrest bail are distinct. *Prima facie*, even if the underlying cause of the dispute relating to water connection, may be civil, however the specific roles attributed to the three accused especially the Accused Nos 2 and 3 i.e. the Applicants before this Court cannot be overlooked and or undermined at this preliminary stage.

7. A perusal of the case diary / investigation papers would indicate that there the statement of the eye witness Rahul Dilip Patil dated 29 May 2025 recorded just two days after the incident, who was present at the spot of incident is recorded during investigation. So also, the statement of another witness dated 1 June 2025 is also carefully perused which corroborate the contents of the FIR. The same cannot be glossed over at this juncture even if the starting point of dispute between these parties may be civil. Such can never be a pretext / ruse to bring about a situation of lawlessness, or a license to commit illegalities and /or offences under our laws/ criminal jurisprudence.

8. I have also considered Mr Sapkal's insistence on the complaint and FIR No 0127 of 2025, lodged on 16 June 2025 at 17:57 hours by the same police station where the informant is the Sarpanch of the same village against the informant and witness in the present crime under consideration. The allegations there are against the present informant and the witness. Such complaint relates to same days i.e. 27 May 2025 at about 12 hours (3 hours after the present incident) with regard to role and involvement of informant and witness in such illegal water connection. However, it appears that the said subsequent FIR lodged much later on 16 June 2025 much after the present incident in the crime under consideration does not name the present accused persons in the said complaint It is general in nature which on careful perusal seems to be more of an afterthought than a counterblast.

9. Mr Sapkal may be right in contending that the nature of injuries to the Informant is simple in nature. This, as law would

mandate cannot be a stand alone factor as one is required to examine the nature of accusations, allegations and the specific roles of the accused in the FIR. Mr. Phule may be correct in submitting that the accused and informant are of the same village. The accused were initially absconding. If granted the ABA after enlarging the Accused No 1 on regular bail the threat to the informant, accused the other witness and possibility of tampering with evidence in the given facts and circumstances cannot be brushed side at this *prima facie* stage, like the present.

10. As far as custodial interrogation is concerned the recovery of pistol used by Accused No.3 remains to be done along with the gold chain of about 5 tolas as noted in the FIR. There would be other factors also exclusively within the knowledge of the Applicants and the political undertones to the rivalry between the parties, nature, type of the pistol, license if any, it being a dangerous weapon used, as prosecution would submit, would be crucial for a detailed and effective investigation which is at a nascent stage.

11. I have perused carefully perused the decisions in Chandrapraksah S Khatke v/s State of Maharashtra¹ of the Principal Bench of this Court followed by another decision in Shankar Gulab Jadhav v/s State of Maharashtra² of this Court dated 20 February 2023, cited by Mr Sapkal. The earlier decision though there is an observation of false implication due to political rivalry is on totally different facts in as much the Court clearly noted that there was no specific role attributed to the Applicant there in gathering the unlawful

¹ ABA 671 of 2022 dated 6 June 2022

² ABA No. 155 2023

assembly. The latter decision was in the context of a scuffle in public place relating to gram panchayat elections, again on different factual matrix as the present incident of assault undisputedly occurred at the hotel premises of the informant where the accused persons were present. Mr Phule has relied on decisions of the Supreme Court in *Amit Rana @ Koka v/s State of Haryana*³ and *Shoyeb Raja v/s State of Madhya Pradesh & Ors.*⁴ in relation to Section 109 BNS (Section 307 of the IPC). What is pertinent to note is that the Supreme Court in the earlier decision of *Amit Rana* has inter alia held that the offence to commit murder punishable under Section 307 of IPC, is constituted by the concurrence of *mens rea* followed by *actus reus* to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a *sine qua non*.

12. Here, Mr Sapkal's response to this by citing the example under the BNS statute as long the gun though loaded was not used to fire there can be no offence under Section 109 (1) is duly noted. However, considering the peculiar factual matrix before the Court coupled with the Supreme Court decision in *Amit Rana* (Supra) pointing out the pistol by the Accused No 3 towards the informant not bereft with *mens rea* / intent to kill the informant is not isolated but is coupled with other attempts like use of fist blows, knife by the co accused with an clear intent to kill the informant as it unfolds, which cannot be *prima facie* discarded and requires to be fully, thoroughly and effectively investigated. Juxtaposing the parameters, succinctly laid down by the Hon'ble Supreme Court in the matter of *Krishnamurthy v/s*

³ 2024 SCC Online 1763

⁴ 2024 SCC Online 2624

State of Karnataka to the nature of accusations in the present proceedings common intention under Section 3(5) of BNS (Section 34 IPC), *prima facie*, cannot be ruled out at this juncture. Also here, the co accused being armed earlier with knife, then pistol are dangerous weapons. The pistol along with the robbed gold chain are to be recovered as noted above being punishable with 10 years imprisonment under Section 309 (4) making the offence non bailable and cognizable. All of these cannot be given a go by at this preliminary juncture, in the given factual backdrop.

13. The Court would not dispute the decision of the Supreme Court relied on by Mr. Sapkal in *Manish Sisodiya vs. Directorate of Enforcement*⁵ that bail is the rule and the jail is the exception in the context of regular bail. However, right from the decision of the Constitutional Bench of the Supreme Court in *Shri Gurubaksh Singh Sibbia and Ors v/s State of Punjab*⁶ reiterated recently in *Deepak Aggarwal v/s Balwan Singh & Anr.*⁷ that Anticipatory Bail is an extraordinary remedy which ought to be granted in exceptional cases by cautious judicious discretion.

14. In such factual complexion, I have considered the *sine qua non* of *prima facie* case in an ABA, as noted by the Supreme Court in *Sumitha Pradeep v/s Arun Kumar C. K. & Anr.*⁸ which ought not to be ignored or overlooked and that in *CBI v/s Anil Sharma*⁹ where the Supreme Court held that in a case effective interrogation of a suspected

⁵ 2024 AIR SC 4053

⁶ 1980 2 SCC 565

⁷ SLP Criminal No. 17504 of 2025; 18 December 2024

⁸ 2022 17 SCC 39

⁹ AIR 1997 SC 3806

person is of tremendous advantage in disinterring many useful information and materials which would have been successfully concealed.

15. In light of the above, in my considered view, the Application is devoid of merits and the following order is passed:-

ORDER

ABA No.1309 of 2025 is **Rejected**.

16. Needless to mention that the observations made above are *prima facie* for the purposes of the adjudication of this ABA and also that the same would not influence the Trial Court even in the event the Applicants choose to surrender by applying for regular bail, which would be decided on its merits and in accordance with law.

(ADVAIT M. SETHNA, J.)

PRW