

MHTH290012332024



Order below Ex.1 in Criminal Anticipatory Bail Application
No.593/2024
(CNR NO.MHTH29-001233-2024)
(Abuzar Junaid Shaikh Vs. State of Maharashtra)

1] This is an application filed by applicant for seeking pre-arrest bail under section 438 of Cr.P.C. in C.R.No.952/2024, registered at Shantinagar Police Station, Bhiwandi, for the offence punishable under sections 307, 143, 147, 149 of I.P.C., under sections 4, 25 of Indian Arms Act, and under section 37(1) r/w. 135 of Maharashtra Police Act.

2] Brief facts, which give rise to file the present application, are as under :

Complainant is residing at given address along with his family. It is alleged that on 28.11.2023 persons namely Juber, Juned, Istiyaq, Abuzar and Hujefa caused beatings to the complainant's son by means of knife. In respect of said incident FIR No.939/2023 registered at Shantinagar Police Station for offence under section 307 of IPC against the above persons. On that count, there was dispute between the complainant and above persons.

3] On 02.04.2024, at 6.30 p.m. complainant and his

brother came to house by purchasing material. Complainant's brother Taufiq went to his house situated near to complainant's house. The complainant heard shouting from outside the building. He noticed that his brother Abid sustained injury to his head and was shouting. He asked Abid as to what had happened ? Abid disclosed that there was a quarrel with Juber and he assaulted to him. Complainant noticed that Juber, Istiyaq, Juned, Shahbaj, Abuzar, Sajid, Abtaf, Mustafa were present on the spot and they were having wooden stick and other weapons. They were causing beatings to Abid. The complainant and his brother Taufiq and son Fardin asked them as to why they causing beatings to Abid ? At that time Sajid assaulted to complainant by means of sharp weapon in his hand and Aftab and Mustafa assaulted on complainant's head by wooden log. They caused beatings to Taufiq and Abid also. In the incident, complainant as well as Taufiq sustained injuries to them. Abid also sustained injuries. They took Taufiq to Shantinagar Police Station and thereafter he shifted to Nair Hospital, Mumbai and J.J. Hospital for further medical treatment.

4] Complainant lodged complaint in this regard. On the basis of his complaint, this crime is registered and police started investigation.

5] During the course of investigation, police arrested some accused. After granting sufficient police custody, arrested accused remanded to judicial custody.

6] By filing this application, applicant Abuzar Junaid Shaikh seeking his release on pre-arrest bail. According to him, he has no concern with crime in question. He alleged that accused no.6 Sajid has lodged FIR 950/2024 in respect of the same incident against opposite party. He submitted that Juber Shaikh and Istiyaq were brutally murdered by complainant and his family members and family members of this applicant were injured. He prays to allow the prayer.

7] Prosecution strongly resisted the prayer by filing say vide Exh.7. According to prosecution, offences alleged are serious. Prosecution alleged further that the parties have filed counter cases against each other and investigation is in progress. According to prosecution, there is enmity between both parties and applicant may have threatened to witnesses.

8] In this matter original complainant is also appeared and strongly resisted the prayer in this application. According to complainant, this applicant was present on the spot at the relevant time and he also caused beatings to the injured. Ld. Advocate appearing for complainant has filed written notes of argument vide Exh.15. Perused the same.

9] It is submitted by Ld. Advocate for applicant that, at the time of commission of the offence, this applicant was juvenile and ABA was granted to other co-accused by this court. He submitted that complainant's party committed murder of Istiyaq

and Juber due to previous enmity.

10] He submitted further that two persons from family of this applicant have been murdered by other side and four persons from family of this applicant were injured in the incident. He submitted that this applicant never used any weapons in alleged incident and he has no active role in alleged assault. He relied upon findings recorded in order of ad-interim protection granted to the applicant and submitted that as per those findings this applicant has no active role in alleged crime. He prays to allow the prayer on ground of parity. In support of his arguments Ld. Advocate for applicant relied upon an order passed in BA 443/2024 and 652/2024 by which other co-accused granted pre-arrest bail by this court.

11] Ld. APP Mr. Mundhe and Ld. Advocate of the complainant submitted that the offences alleged are serious and name of this applicant is stated in FIR as one of the assailant. They submitted further that applicant is habitual criminal.

12] In support of his arguments, Ld. Advocate of the applicant relied upon findings recorded by Hon'ble Bombay High Court in the matter of **Shubham @ Bablu Milind Suryavanshi Vs. The State of Maharashtra** (BA 2282/2021). In that matter Hon'ble Bombay High Court granted pre-arrest bail to the applicant therein as the applicant was juvenile. Here also applicant claiming himself as a juvenile. But, on perusal of FIR it

appears that name of this applicant is clearly stated by the complainant as one of the assailants. On perusal of FIR it revealed that the incident in question occurred due to previous enmity between the parties. Record shows that previously in the year 2023 crime no.939/2023 under sections 307, 326, 323 of IPC registered at Shantinagar Police Station. In that matter also this applicant is shown as one of the accused. Thus the present applicant is having criminal antecedents. Findings recorded in the above ruling are based on different facts. Hence, those are not applicable to case in hand.

13] Ld. Advocate of the applicant further relied upon findings recorded by Hon'ble Bombay High Court in the matter of **Pooja Gagan Jain Vs. State of Maharashtra (Criminal Writ Petition No.2372/2024)**. In that matter the child in conflict with law committed offence therein under the influence of alcohol. Hon'ble High Court referred the child in conflict with law therein to Psychologist or undergoing therapies with de-addiction center for his rehabilitation. The findings therein are based on different facts. Hence, not applicable to present case.

14] Ld. Advocate of applicant further relied upon findings recorded by Allahabad High Court in the matter of **X-Juvenile Vs. State of U.P. and another (Criminal Revision 1571/2024)**. In that mater there was dispute regarding age of the applicant therein. Hence, those findings not applicable to case in hand.

15] Record shows that other co-accused in this case are released on pre-arrest bail by this court. But their role is totally different than the present applicant. On perusal of order in BA 443/2024 it revealed that the applicants therein were granted pre-arrest bail because they were seriously injured in the incident. Here, this applicant is not injured in the incident. But due to him injuries sustained to the witnesses and complainant. Hence, finding in BA 443/2024 not helpful for the present applicant.

16] No doubt, co-accused Asif Abdul Wahab Shaikh is released on pre-arrest by this court by passing order in BA 652/2024. But, name of that co-accused is not mentioned in FIR. Hence, ground of parity not available to the present applicant.

17] No doubt, as per contents in FIR no any weapon used by this applicant/accused in commission of this crime. But, there are specific contents in FIR that this applicant was present on the spot at the relevant time and he also caused beatings to the injureds. As per say of IO CC TV Footage regarding the incident in question is collected during investigation and in CC TV Footage this applicant is noticed while causing beatings to the witnesses.

18] Record further shows that in previous crime no.939/2023 also the present applicant is one of the culprit. The document and say filed in this matter indicates that at the time of this crime also applicant/accused was present on the spot and

caused beatings to the witnesses. No doubt, the applicant has taken a plea that he was juvenile at the relevant time. But, as per Juvenile Justice Act, police custody cannot be granted to juvenile. But, there is no bar to arrest the juvenile in any crime.

19] No doubt, ad-interim protection is granted to the applicant by passing order to that effect. But, after passing the said order, original complainant filed certain documents. So also Investigating Officer has filed say on behalf of prosecution. Investigation is still in progress. Documents on record prima-facie shows an involvement of this applicant in crime in question. Hence, no case is made out by the applicant to use discretion in his favour and to confirm an order of ad-interim protection granted to him. In the result, I pass following order :

Order

- 1] Application stands rejected.
- 2] Ad-interim protection granted to applicant will continue for a period of four days from the date of this order.
- 3] If applicant failed to bring further orders within four days from this order, then prosecution is at liberty to arrest him.
- 4] Inform the concerned police station accordingly.

Bhiwandi.
14.08.2024

Sd/-
(N.L. Kale)
Additional Sessions Judge,
Bhiwandi.