

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

Criminal Application No.1545 Of 2015.

Sambhaji Kishanrao Bothe.

Versus.

The State of Maharashtra.

Appearance =>

Mr. V.D. Salunke, Advocate h/for Mr. Manish Tripathi, Advocate for the Applicant.

Mr. A.V. Deshmukh, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 9th April, 2015.

Per Court :-

Present Criminal Application is filed by the applicant for grant of anticipatory bail, since he is apprehending his arrest in connection with CR No. 20/2015 registered with Police Station, Bori, Tal. Jintur, District – Parbhani, for the offences punishable under Section.s. 302, 307, 201 read with 34 of the Indian Penal Code.

[2] Heard Mr. V.D. Salunke, Advocate h/for Mr. Manish Tripathi, Advocate for the Applicant and Mr. A.V. Deshmukh, Additional Public Prosecutor for the State of Maharashtra, in extenso.

[3] The Election Card issued by Election Commission of India in favour of present applicant - Sambhaji Kishanrao Bothe shows his age as 62 years on 1st January, 1994. Thus, the statement made in the cause title of the

present Application that the applicant is 82 years of age is prima facie has to be believed.

[4] Sambhaji Kishanrao Bothe is having one son by name Jagannath. Jagannath married twice. Firstly, he married with Ruksana. From the said wedlock, he begotten one son – Raju. Ruksana left the company of Jagannath. Jagannath has taken care of his son Raju. Jagannath married second time with Rekha and from the said wedlock, he has begotten one son – Pandharang. Thus, applicant – Sambhaji is grand-father of Raju and Pandurang.

[5] Jagannath gave six acres of agricultural land to Raju. Jagannath resides with Pandurang and Rekha. It appears that, Raju raised dispute and was claiming more share in the land.

[6] First Information Report is lodged by Jagannath with Police Station, Bori on 9th February, 2015. Since F.I.R. was disclosing commission of cognizable offence, the Investigating Officer registered the said First Information Report as CR No.20/15.

[7] First Information Report discloses that on 8th February, 2015 in the morning, the first informant's wife Rekha and his son Pandurang proceeded towards their agricultural field. On the said day, at 2 O'clock, first informant went to village Karanji, Taluka – Manwat to meet his married daughter – Rajashree, since she was not keeping good health. There he received telephonic call from Pandurang. Pandurang gave information to him that Raju has picked up a quarrel with him and is beating him. First informant disclosed the said fact to his daughter - Rajashree and thereafter immediately proceeded towards his village. When he reached to village

Koyal, Police Patil of village - Kumbhai has informed the first informant on telephone that Raju has assaulted Pandurang; due to which he sustained serious injuries and he is taken to hospital. Thereafter, when first informant reached to Kumbhari, that time, he received information that Pandurang is assaulted by Raju and he has been taken to the Government Hospital at Bori, therefore, first informant reached Government Hospital. That time, he found various injuries on the body of Pandurang.

First Information Report further states that first informant made enquiry with Pandurang about the incident and that time, it was revealed to the first informant by the Pandurang that Raju (his step brother) has assaulted on him by means of sickle, claiming more share in the property and when his mother - Rekha tried to intervene, she was also assaulted by Raju by means of sickle.

Thereafter, first informant made a search of his wife Rekha, but she found in a dead condition in a agricultural field. Thus it is clear that in the first information report which was filed on receiving information from injured did not find place the name of present applicant.

[8] On 16th February, 2015 Investigating Officer submitted report to Judicial Magistrate, F.C., Jintur where-in, it was pointed out that on 11th February, 2015 statement of Pandurang was recorded whereby he stated the involvement of present applicant, therefore, his name is also added alongwith other two accused persons by name – Balasaheb Sheshrao Harkal and Bhagirath Sahebrao Bothe, as accused persons.

[9] Thereafter application was moved for anticipatory bail by newly arraigned accused persons i.e. Balasaheb and Bhagirath and present

applicant – Sambhaji before the learned Sessions Judge, which was registered as Criminal M.A.No.137/2015. The learned Additional Sessions Judge by his order dated 10th march, 2015, partly allowed the said application and granted anticipatory bail to Balasaheb and Bhagirath however, application of present applicant was rejected by the learned Additional Sessions Judge on the ground that present applicant is residing with Raju and is the grand father of Raju, therefore, his involvement “may” be there.

[10] The learned Additional Public Prosecutor has made available the entire entire investigation papers before the court. Medico injury certificate of Pandurang is dated 10th march, 1015. It shows eight injuries on the person of Pandurang.

What is important to note is that, in the said injury certificate, it is not mentioned at all that Pandurang is unconscious when he was referred to the Government Hospital, Parbhani for further treatment and for E.N.T. surgical opinion.

[11] Further in the investigation papers the admission of Pandurang in Government Hospital, Bori and Hospital at Parbhani are conspicuous by their absence. Those would have been primary document to show that when the injured was admitted at Bori and Parbhani, what was his condition whether he was conscious or unconscious. This assumes importance because First Information Report is lodged by Jagannath where-in, he has made categorical accusation against Raju only on the basis of information disclosed to him by Pandurang.

[12] Further presence of Jagannath with Pandurang at Government Hospital is corroborated in view of the statement of Vaishali and Radha, who are the sisters of Pandurang. Their statements clearly show that their step brother – Raju is in Police Station and their father – Jagannath is besides the Pandurang in the Hospital. Thus, prima facie, it is clear that First Information Report was lodged by Jagannath on the basis of information disclosed to him by the injured Pandurang.

Raju is already in custody. Investigation papers shows that, by recovery statement, weapon – sickle is recovered, as discovered by him. Other co-accused are already released on anticipatory bail by the learned trial court, may be their role ascribed to them is different.

[13] Looking to the fact that name of present applicant is appearing after period of three days, especially when really Pandurang was unconscious or not, for three days, which is debatable, false implication of present applicant at least, prima facie, cannot be ruled out, in view of the long standing dispute on the count of distribution and share in the agricultural property.

[14] Further the present applicant is about 82 years age. That is also one of the consideration that the court has to look into, may be its effect is little. Thus, looking to the aforesaid, this court is of view that discretion can be exercised in favour of present applicant. Hence, I pass the following order :-

ORDER

- (i) Criminal Application is allowed.
- (ii) In the event of arrest, Applicant - Sambhaji Kishanrao Bothe shall be released on anticipatory bail on he executing P.R. Bond of Rs. 15,000/- [Rs. Fifteen Thousand.] with two solvent sureties in the like amount, in connection with CR No. 20/2015 registered with Police Station, Bori, Tal. Jintur, District – Parbhani, for the offences punishable under Section.s. 302, 307, 201 read with 34 of the Indian Penal Code.
- (iii) The applicant shall attend Police Station, Bori, Tal. Jintur, District – Parbhani once in a week, preferably on every Monday, between 2.00 p.m to 4.00 p.m., till Charge is framed by the learned Sessions Judge.
- (iv) The Applicant shall not tamper with the prosecution witnesses or to interfere with the investigation.
- (v) Needless to mention all the observations made in the present Application are only for deciding the application for grant of anticipatory bail. All observations are prima facie in nature and those observation shall not come in the way of the learned Additional Sessions Judge, while conducting the trial, on its merit.
- (v) With this Criminal Application is allowed and same is disposed of.

(V.M. DESHPANDE, J.)