

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [ABA] No.336 of 2016
[Diwakar Domaji Bhopaye & another Vs. State of Mah.]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. S.V. Sirpurkar, Adv., for the Applicants.
Mr. A.V. Palshikar, APP for respondent.

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CORAM : V.M. DESHPANDE, J.

DATE : 14th June, 2016

This is an application under Section 438, Criminal Procedure Code, since the applicants are apprehending their arrest in connection with Crime No. 32/16, registered with Police Station, Chamorshi, Distt. Gadchiroli, for the offences punishable under Sections 186, 189, 332, 353 and 504 read with Section 34 of Indian Penal Code.

Heard Mr. S.V. Sirpurkar, learned counsel for the applicants, and Mr. A.V. Palshikar, learned APP for the respondent-State.

The Investigating Officer has also filed reply opposing the application for anticipatory bail.

The counsel for applicants submits that a report was lodged by Applicant No.2 against the first informant,

who is a Block Development Officer of Gram Panchayat, Murkhala [Mal]. He further submits that the FIR, in question, is nothing but an outcome of the vengeance nurtured by him in view of the previous complaint lodged against first informant by the Applicant No.2.

The gist of the First Information Report, in question, is that on 12th May, 2016, the Applicant No.2 gave a letter to the Office of the first informant for the enquiry. The said letter was given to the Peon of Gram Panchayat by name Shri Shyamrao Nishane. The first informant is not disputing about the factum of handing over the letter to the Office of Gram Panchayat.

According to the First Information Report, on the next day, i.e., on 13th May, 2016, when the first informant was discharging his official duty, both the applicants reached his office and demanded the signature of the first informant on the office copy of the letter handed over on 12th May, 2016. The assertion in the First Information Report is that, that time first informant refused to give his signature on the office copy, since, according to first informant, it is not in his realm to hold and conduct the enquiry. It is further alleged in the First Information Report that, that time the Applicant No.1 also demanded the amount for construction done. That time, according to First Information Report, the first informant told that on handing over of entire documents, the bill will be passed. According to the First Information Report, that

time, there was a verbal altercation in between the first informant and the present applicants, and that time, both the applicants disturbed the official functioning by throwing away the record.

The reply shows that the applicants' custody is required for obtaining certain documents from them. It is to be noted that this Court on 27th May, 2016 was pleased to grant ad interim anticipatory bail in favour of present applicants, with a direction that the applicants shall attend the Police Station. The submission of the learned counsel for the applicants that in pursuance of the said directions, the applicants have attended the Police Station, is not at all disputed by the learned APP. The learned counsel for the applicants also pointed out that the applicants were served a notice under Section 91, Criminal Procedure Code, by the Investigating Officer, by which they were called to hand over the documents mentioned in the notice. The submission of the learned counsel for the applicants is that pursuant to the said notice, both the applicants replied the same.

Looking to the nature of the allegations made in the First Information Report and the fact that the applicants have already attended the Police Station and also co-operated the Investigating Officer and further from the reply, it is clear that the statements of eye-witnesses are already recorded, in my view, the custodial presence of the applicants is not at all necessary, especially when the Applicant No.1 is an Up-

Sarpanch and the Applicant No.2 is a Member of the Gram Panchayat of village Murkhala. Thus, there is a least possibility of the applicants absconding from the legal course of justice. In that view of the matter, the application deserves to be considered favourably.

The application is allowed.

The applicants be released on bail in the event of their arrest in connection with Crime No. 32/16 registered by the respondent for offences under Sections 186, 189, 332, 353 and 504 read with Section 34 of Indian Penal Code, on they executing a Personal Bond of Rs. 20,000/- [rupees twenty thousand only] by each of them with one solvent surety in the like amount.

The applicants shall extend their full co-operation to the Investigating Officer, and shall attend the Police Station as and when required by the Investigating Officer. For that, the Investigating Officer shall give a clear cut forty-eight hours' written communication to the applicants.

With this, the application is allowed and disposed of.

Judge

