

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.820 OF 2019

Suresh s/o Pundlik Tayade .Vs. State of Maharashtra,through P.S.O, P.S.
Tamgaon, Dist. Buldhana.

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

Court's or Judge's orders.

Mr. A.B. Mirza, Advocate for applicant.

Mr. P.S. Tembhare, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : DECEMBER 18, 2019

This is an application for anticipatory bail.

2. Heard Mr. A.B. Mirza, learned counsel for the applicant and Mr. P.S. Tembhare, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of the prosecution as well as investigation papers which were placed before me at the time of consideration of this application.

3. The applicant is apprehending his arrest in connection with Crime No.263/2019 registered with Police Station, Tamgaon, District Buldhana for an offence punishable under Sections 147, 148, 149, 307, 324 and 504 of the Indian Penal Code.

4. Primarily the application is opposed by the learned Additional Public Prosecutor on the ground that investigation is in progress and charge-sheet is yet to be filed.

5. A crime was registered with Police Station, Tamgaon in view of the oral report lodged by one Dharmendra Thorat, an eye witness. As per first information report, on 12.11.2019, when he was present in his house at about 07:30 O'clock in the evening, he heard loud noises which were coming from road going towards village Kavthala. Therefore, he went near said place. That time he noticed that Nilesh Thorat was being assaulted by Subhash Avachar and Ajay Avachar by means of sticks on account of old enmity. According to the version of first informant Dharmendra Thorat, these two assailants assaulted on Nilesh on his waist, legs and on his back. The report further states that Suresh Thorat and Anil Thorat reached to the spot in view of the noise and they tried to intervene in the quarrel. As per the first information report, when these two persons were intervening in the quarrel that time Gopal alias Golu Avachar, Amol Avachar, Sachin Avachar and Suresh Tayade (present applicant) came there and they also picked up verbal quarrel and gave abuses. The report further states that at that time Suresh Thorat was also assaulted by Gopal Avachar by means of an Axe on his head resulting into bleeding injuries to Suresh.

6. During the course of the investigation statements of Anil Thorat and Suresh Thorat, who also received injuries, were recorded. Statement of Anil Thorat would reveal that though applicant-Suresh Tayade came along with other co-

accused after assault on Nilesh, witness Anil Thorat was assaulted by Amol Avachar. Similarly, statement of injured Suresh Thorat would also show that he was assaulted by Gopal Avachar though applicant was present.

7. None of the prosecution witnesses is attributing any overt act of assault to the present applicant. As of now case of the prosecution is that the applicant was a member of an unlawful assembly. Whether unlawful assembly was having object of assaulting the injured person is a question of trial. However presently the Court is considering the question of handing over of custodial presence of the applicant to police for investigation. In my view, since it is not the case of the prosecution that the applicant has participated in assault by taking aid of any weapon, therefore, the question of recovery of any weapon at his behest is completely ruled out.

8. Merely because charge-sheet is not filed, personal liberty of the present applicant cannot be curtailed. Insofar as the investigation purpose is concerned, the said can be taken care of by putting certain conditions on the applicant. Resultantly, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.263/2019 registered with Police Station, Tamgaon, District Buldhana for an offence punishable under Sections

307, 504, 147, 148, 149 and 324 of the Indian Penal Code, applicant - Suresh s/o Pundlik Tayade be released on bail on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Tamgaon, District Buldhana twice in a week i.e. on every Friday and Tuesday and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m., till filing of the charge-sheet.

(iv) After filing of the charge-sheet the applicant shall attend Police Station, Tamgaon, District Buldhana once in a month i.e. on third Saturday of every month and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m., until culmination of the trial.

The application is disposed of.

JUDGE

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