

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

CRIMINAL APPLICATION (ABA) NO. 890 OF 2019

Sudhir alias Deva s/o Manik Date.Vs. State of Maharashtra, through PSO,
PS, Ballarpur, Tah. Ballarpur, Dist. Chandrapur.

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

Court's or Judge's orders.

Mr. V.R. Borkar, Advocate for applicant.

Mr. S.M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 13, 2020

Heard Mr. Borkar, learned counsel for applicant and Mr. Ghodeswar, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of the prosecuting agency.

Applicant is apprehending his arrest in connection with Crime No.939/2019 registered with Police Station, Ballarpur, Dist. Chandrapur for an offence punishable under Sections 2 and 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil, Aghori Practices and Black Magic Act, 2013.

Mr. Borkar, learned counsel for the applicant would submit that the applicant was not present on the spot though his name is appearing in the First Information Report (FIR). He further submits that, applicant has not played any part in "Aghori" activity. He submits that co-accused persons were already released on bail therefore applicant be released on bail.

Mr. Ghodeswar, learned Additional Public Prosecutor vehemently opposed the application by filing detailed reply. In addition to the reply, learned Additional Public Prosecutor makes a submission on the point of custodial presence of the applicant that custodial presence of the applicant is necessary for conducting test identification parade.

The FIR is lodged by one Dinesh alias Pintu Kamde. According to prosecution case on 30.11.2019 when he was present near Zilla Parishad School at 09:15 p.m. he noticed one Nattuji Aurase was proceeding to *Jangal* along with two unknown persons. Said Dinesh along with one Akshay Chaudhary followed them. Said Natthuji Aurase and two unknown persons went near the field of one Hivare Babu. First informant – Dinesh seen some illegal activity therefore he called other villagers. When they entered in a room of the said agricultural field, they found one girl along with two persons were performing *Pooja*. The articles; lemon, black cloth, rice, turmeric, kumkum, coconut, etc. were found on the spot. Noticing the presence of the first informant and other villagers said Aurase and other two unknown persons ran away from the place on a motorcycle. The villagers inquired with the girl who disclosed her name as Rupali Dilip Ukey and other persons Prashant Harishchandra Bansod and Narsingh Arkilawar. These three persons disclosed the identity of the present applicant who ran away from the spot.

In Maharashtra State black magic is prohibited. The object of enacting the Act is noble. The persons like applicant who act as magicians, exploit the villagers in the name of god and other power and are ready to take any steps. The presence of the applicant at the secluded place for which he has no concern shows his involvement in the black magic. Even the girl and other persons who were present on the spot were also arrested and they are released on bail. Considerations for regular bail and pre-arrest bail are altogether different. Merely because co-accused are released on regular bail that cannot be a ground for the Court to release the applicant on anticipatory bail, especially when his involvement is primarily spelt out.

Since the applicant ran away from the spot, the investigating officer is absolutely right in seeking his custodial presence for holding test identification parade at the hands of the complainant since he was not knowing the applicant previously.

Looking to the seriousness of the allegations and fact that this type of offence has a great impact in the societal interest, I am not accepting any of the submissions made by learned counsel for the applicant. Consequently, the application is rejected.

Interim order dated 27.12.2019 stands vacated.

JUDGE