

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

**CRIMINAL APPLICATION (ABA) NO. 894 OF 2019**

Uttam s/o Shivdasji Kapse and another .Vs. State of Maharashtra, through  
PSO, PS, Khapa, Tah. Saoner, Dist. Nagpur

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

Court's or Judge's orders.

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Mr. U.P. Dable, Advocate for applicants.  
Mr.V.A. Thakare, A.P.P. for non applicant-State.

**CORAM : V. M. DESHPANDE, J.**  
**DATED : FEBRUARY 13, 2020.**

Heard Mr. U.P. Dable, learned counsel for the applicants and Mr. V.A. Thakare, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed by the prosecution and the investigation papers.

2. The applicants are apprehending their arrest in connection with Crime No.354/2019 registered with Police Station, Khapa, Tah. Saoner, Dist. Nagpur for an offence punishable under Sections 186, 187, 188, 332, 353, 379, 504, 506 read with Section 34 of the Indian Penal Code.

3. The crime is registered in view of the oral statement given by Circle Officer – Sharad Nandurkar on 04.12.2019. It is the complaint that on 04.12.2019 one truck bearing registration No. MH-40/AK-3699 was intercepted by the complainant and the driver of the said vehicle was directed to produce the royalty receipt since the truck was filled in by sand. Driver of the truck failed to

produce the royalty receipt and other accused persons were called. They arrived at the scene of the occurrence and abused the complainant and also assaulted.

4. From the nature of the complaint, in short, it could be said that as per prosecution case when government officials were discharging their official duties, the complainant was obstructed in discharging the same and there was assault also.

5. According to prosecution case, the vehicle in question is owned by applicant no.2–Praful Kapse and the applicant no.1 – Uttam Kapse, brother of the applicant no.2. From the prosecution case it is very clear that initially when the truck was intercepted these two applicants were not in truck but they arrived on the scene after the call given by the driver of the truck.

6. In this backdrop, this Court has to appreciate the submission of the learned counsel for the applicants that the truck driver whose identity is disclosed as Rajesh Dhurve, lodged a report with very same police station against the Circle Officer Nandurkar that when he was proceeding with the truck and when the truck was intercepted, on his demand the royalty receipt was shown and at that time Nandurkar was under the influence of liquor and he tried to push said Rajesh Dhurve and in that scuffle Nandurkar fell on the ground.

7. It is the submission of the learned Additional Public Prosecutor Mr. V.A. Thakare that this particular allegation made by driver Rajesh Dhurve is found to be false, in view of the medical examination of Circle Officer that he was not under the influence of liquor. He also submitted that from the injury certificate there is injury. Perusal of the injury certificate of Sharad Nandurkar shows that he was having swelling on his face.

8. At the first blush the statement made by the learned Additional Public Prosecutor appears to be very attractive, however after perusing the entire investigation papers which made available to me, I am unable to accept his submission for the following reasons :

- (i) Lodgment of report by truck driver Rajesh Dhurve is not disputed.
- (ii) Record would show that said driver lodged the report at Police Station, Khapa on 04.12.2019 at 02:32 hours.
- (iii) The report lodged by Circle Officer – Nandurkar was on 04.12.2019 at 11:49 hours. Thus, the report lodged by Nandurkar is subsequent to the report lodged by truck driver – Rajesh Dhurve.
- (iv) No explanation whatsoever is offered at least at this stage as to why though complainant was assaulted at the wee hours and he was accompanied by other Government officials, the report was not lodged immediately.

(v) Insofar as the medical examination for consumption of liquor is concerned, no doubt true, the investigation papers show that the blood of complainant was not having alcohol. However, the investigation papers would show that complainant was examined at Primary Health Centre at Khapa on 04.12.2019 at 10:00 hours i.e. prior to the registration of the offence. Further, the investigation papers are totally silent as it could be seen from the report of examination that he was accompanied by any police official of Police Station, Khapa. Further, the incident has occurred in the wee hours in the intervening night of 03.12.2019 and 04.12.2019 and the medical examination of complainant is after 9 hours. Also the injury certificate would shows that there was swelling on the face and as per prosecution 4 to 5 persons assaulted on the complainant. Further, the age of the injury is not mentioned in the injury certificate. In that view of the matter, I am of the view that there is a grain of truth at least prima facie in the report lodged by truck driver Rajesh Dhurve that in the course of pushing, the complainant fell on the ground.

9. Even according to the prosecution, complainant-Rajesh has purchased the sand from Dhanwantari Medical and General Stores through Prashant Wakode who is allottee of sand ghat. Even royalty receipt which produced by the applicants is not disputed by the prosecution which clearly

mentioned the name of Rajesh as a sand driver and also truck registration number owned by the applicant no.2.

10. On 27.12.2019, this Court (Coram: Milind N. Jadhav, J.) has granted interim protection in favour of the applicants with a direction that applicants shall attend the police station on the dates specified in the order and accordingly they attended the police station.

In view of the aforesaid discussion, I am of the view that discretion can be exercised in favour of the applicants. Resultantly, I pass the following order:

**ORDER**

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.354/2019 registered with Police Station, Khapa, Tah. Saoner, Dist. Nagpur for an offence punishable under Sections 186, 187, 188, 332, 353, 379, 504, 506 read with Section 34 of the Indian Penal Code, applicants – (1) Uttam s/o Shivdasji Kapse, (2) Praful s/o Shivdasji Kapse be released on bail on they executing P.R. bond in the sum of ₹50,000/- each, with one solvent surety each in the like amount.
- (iii) The applicants are directed to attend Police Station, Khapa, Tah. Saoner, Dist. Nagpur as and when they are called by the investigating officer. However, for that the investigating officer shall give clear cut two days prior written communication to the them.

(iv) The observations made in this order are purely prima facie in nature and those are only for deciding this application. The learned Judge of the Court below before whom ultimately the trial will be conducted should not get influenced by the observations made by this Court.

The application is disposed of.

**JUDGE**

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