

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**BAIL APPLICATION NO.405 OF 2021**

Shashikant @ Baban s/o Pandurang Gite,  
Age 42 years, Occupation Social Work,  
R/o Bank Colony, Parali Tq. Parali(V)  
Dist. Beed. (At Present in Jail) **.....Petitioner**  
**(Original Accused)**

**VERSUS**

The State of Maharashtra. **.....Respondent**

.....  
Senior Counsel for Petitioner : Mr. R. N. Dhorde i/b  
Mr. V. R. Dhorde.

Public Prosecutor for Respondent-State : Mr. D. R. Kale.

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**CORAM : SMT.VIBHA KANKANWADI, J.**  
**DATE : 27-04-2021.**

**ORDER :**

1. Present applicant came to be arrested on 07-01-2021 in connection with Crime No.04 of 2021, registered with Parali City Police Station, District Beed, for the offence punishable under Section 143, 147, 149, 188, 269, 270, 332, 353, 506 of Indian Penal Code, under Section 3, 4, 25 of Indian Arms Act, under Section 135 of Maharashtra Police Act, under Section 51 (b) of Disaster Management Act and under Section 11 of Maharashtra COVID-19 Regulations, 2020. Present application has been filed under Section 439 of Code of Criminal

Procedure.

2. It will not be out of place to mention here that the applicant had filed bail application earlier under Section 439 of Code of Criminal Procedure bearing Bail Application No.141 of 2021, however it was withdrawn on 05-03-2021 when it was made known to the learned Advocate that charge-sheet is filed during the pendency of that application. Liberty was granted to the applicant to approach the learned Additional Sessions Judge for bail under Section 439 of Code of Criminal Procedure. Accordingly the present applicant had filed such application before the concerned Court, however it came to be rejected on 18-03-2021, hence he is before this Court again.

3. Heard learned Senior Counsel Mr. R. N. Dhorde instructed by Advocate Mr. V. R. Dhorde for applicant and learned Additional Public Prosecutor Mr. D. R. Kale for respondent-State.

4. It has been vehemently submitted by learned Senior Counsel Mr. R. N. Dhorde instructed by Advocate Mr. V. R. Dhorde for the applicant that the First Information Report is the classic example as to how the police machinery has been used by the politically strong person and thereby restraining the present applicant and his wife

from approaching to the Collector, Beed and to remain present at the meeting i.e. Panchayat Samiti Special meeting which was to be held at 11.00 a.m. in Tahsil Office at Parli Vaijnath to discuss the agenda of disqualifying the wife of the present applicant. He has produced on record the documents showing as to who was present for the meeting and only the wife of the present applicant could not remain present. The wife of the present applicant was the president of the Panchayat Samiti, who was appointed on 30-12-2019 and one Balaji Prabhu Mudne was appointed as Vice President, however said Balaji Munde had then joined the hands of the political rival of the present applicant and his wife, and thereby a game was planed in which even the police were involved. The police authorities were under the political influence of the Guardian Minister of the District Beed and by planting articles which were stated to be contraband weapons, a colour was given of serious offence. Perusal of the First Information Report which is in fact lodged by a police constable initially stated that they had seen about 100 to 150 persons in front of the house of present applicant on 07-01-2021. It is stated that provisions of Section 144 of Code of Criminal Procedure were made applicable by the competent authority which prohibited gathering of more than five persons and, therefore, Sub-Divisional Police Officer

Shri. Sunil Jaybhaye and Police Inspector Shri. Kadam had tried to convey to the gathering of the people that they should disburse. It is then stated in the First Information Report that the present applicant was instigating 10 to 15 persons that they should stay there itself and should not proceed. When initially he says that they had seen 100 to 150 persons were found gathered, where is the question of instigation by this applicant only to 10 to 15 persons, is a question. It is then contended that the appeal made by the police authorities was not adhered to, and therefore, they started taking those 10 to 15 persons in custody. All those persons manhandled the police machinery and those persons grabbed the custody of the present applicant and started to take him to his house. Three to four persons amongst them were stating that they should get the police persons inside the house and then assault them. Present applicant and his 10 to 15 followers were taken inside the house and the door was locked. They were not opening the door, and therefore, it is stated that Sub-Divisional Police Officer Shri. Jaybahye called further police team. The informant then states that they received secret information that the present applicant and 09 named persons and others were holding contraband weapons, and therefore, he lodged the report. The charge-sheet would further

show that thereafter house search was made by taking order from the Magistrate, and it is stated that, one iron Katti having wooden handle, one country made pistol (Deshi Katta), one barrel and rusted country made pistol (Deshi Katta), four rounds of bullets and 15 mobile phones were seized. In fact, all these articles have been planted except the mobile phones by the police authorities at the directions of the Guardian Minister. The case has been registered only because of the political vendetta. Entire investigation is over, all the other co-accused have been released on bail either by this Court or by the concerned Court, and therefore, the applicant also deserves to be released on bail.

5. Per contra, the learned Public Prosecutor Mr. D. R. Kale strongly opposed the application and submitted that unnecessarily without any evidence the name of the Guardian Minister has been involved by the present applicant, may be for his own political benefits. When there was clear directions by the competent authority under Section 144 of Code of Criminal Procedure, that more than five persons should not come together, yet the present applicant was found collecting many persons and when the legal action has been taken, the applicant cannot say that it is done only

with some intention. When there is evidence against the present applicant, he does not deserve to be released on bail.

6. From the documents those have been produced on record by the present applicant, especially the special meeting that was organized on 30-12-2019, it could be seen that as no other nomination was received, the wife of the present applicant Mrs. Urmila Shashikant Gitte was elected as president and Balaji Prabhu Munde was elected as vice president of the Panchayat Samity, Parli Vaijnath District Beed. It is the contention of the present applicant that wife of the present applicant could be elected with the support of the then Minister Smt. Pankaja Munde, however thereafter, Smt. Pankaja Munde lost the elections as MLA, but Shri Dhananjay Munde who is the Cabinet Minister now in the present Government, was elected as MLA. He is the Guardian Minister for the District Beed. It is stated that there is political rivalry between Smt. Pankaja Munde and Shri Dhananjay Munde. It is then stated that Balaji Munde had then went with Shri Dhananjay Munde and it had thereafter caused a move for 'Vote of No Confidence' against the wife of the present applicant. Notice was issued by the Collector, Beed that the said special meeting in which the 'Vote of No Confidence' agenda would

be taken at 11.00 a.m. on 07-01-2021. First Information Report states that the police had made arrangements taking into consideration the meeting for 'No Confidence Motion' and Bandobast was arranged since 07.00 a.m. It was found at about 11.15 a.m. that about 100 to 150 persons had gathered in front of the house of present applicant. If we were supposed to go by the notice that was issued by the Collector, Beed, then meeting ought to have started at 11.00 a.m., but then the police who were patrolling could found that 100 to 150 persons had gathered in front of the house of the present applicant. Now it has not come on record that, what is the distance between the house of the present applicant which is stated to be the Bank Colony in Parli Vaijnath to Tahsil Office, Parli which was the venue for the special meeting. If the meeting was arranged in Tahsil Office, then why the patrolling should have been to the house of the applicant, is a question. Further the document produced on record i.e. the register, would show that the wife of the present applicant was absent for that meeting. If she was supposed to answer the 'No Confidence Motion' then she would have left the house well in advance. Therefore, the chronology of the events that has been stated in the First Information Report create doubt. Another fact to be noted is that as per the First Information Report when superior

officers were also present, and it is stated that, they were also assaulted, why a police constable should lodge the First Information Report ? What prevented to Sub-Divisional Police Officer Shri Sunil Jaybhaye from lodging a report ? No answer could be found from the entire charge-sheet. Interestingly he has been shown as a witness and his statement under Section 161 of Code of Criminal Procedure has been recorded. If the superior officers who are supposed to take lead are behaving in such a manner, then it is harmful to the institution. If we consider the statement of Sub-Divisional Police Officer Shri. Sunil Jaybhaye under Section 161 of Code of Criminal Procedure, it is the replica of the First Information Report. So also statements of other police witnesses is literally the "copy - paste" of the First Information Report ; which is speaking for itself.

7. Another fact that is required to be noted is that with the noval idea of some secret information, it appears that the police approached learned Judicial Magistrate First Class, Parli Vaijnath and prayed for warrant to be issued for search of the house of the applicant. It has been immediately granted under Section 165 of Code of Criminal Procedure as the section is quoted in the order. If

we consider Section 165 of Code of Criminal Procedure, Sub-section (1) states about powers of the police officer making investigation to take search of house. Further Sub-section (4) of Section 165 of Code of Criminal Procedure states that the provisions for the search warrants and the general provisions as to the search containing Section 100 of Code of Criminal Procedure shall be observed. Section 100 (4) of Code of Criminal Procedure runs thus ;

*"Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."*

That means, two or more independent and respectable inhabitants of the locality should be called when such search is conducted. If we consider the panchanama which is styled as 'Ghar Zaddi Panchanama' (house search), two panchas were engaged, one is Govardhan Manik Garje and another is Hanumant Sapteshwar Giri. Out of them Govardhan Garje is said to be resident of

Madhuranagar, Jalalpur Parli Vajinath and the search of the house of the applicant situated in Bank Colony, Parli Vajinath was taken. It is not clear and rather it is doubtful that said Govardhan Garje is resident of the locality. As regards the another panch Hanumant Giri is concerned, his residential address is absolutely not mentioned. He appears to be the government employee working with Tahsil office. There is another panchanama which is said to be the spot panchanama i.e. the panchanama of the offence which appears to be also executed at the same time with the help of same panchas. The spot panchanama has been executed between 17.15 to 17.45 hours and the house search panchanama is executed between 18.20 to 19.00 hours. Where the police and the panchas were from 17.45 to 18.20 hours will have to be explained by the concerned Police Inspector and further when the warrant was already taken from the learned Magistrate then why the house search was not taken first, is a question. The prosecution has not given any answer in respect of it. Further, when the house search shows apart from the contraband articles, about 15 mobile phones have been recovered of various companies, it appears that the police inspector who is now the investigating officer also, had not even made inquiry as to who is the owner of all these mobile handsets. How mobile phones could have

been connected to the crime is also not explained in charge-sheet. There is no investigation further on that point after they have been seized. Police officer is not allowed to seize all the articles from a place merely because the article is there. Why other articles from the house are not seized ? When now they are seized, the Investigating Officer should establish nexus between that property and offence. No such material is produced. Another fact that is mentioned in the same panchanama is that the applicant had fixed Closed Circuit Television (CCTV) Cameras and police had made search of the house in order to take the footage i.e. Digital Video Recorder (DVR) from the house of the applicant. The charge-sheet is silent as to what happened to that Digital Video Recorder (DVR). No Closed Circuit Television (CCTV) footage in any form has been given at the time of filing of the charge-sheet. Even the charge-sheet does not say that the footage was recovered or that Digital Video Recorder (DVR) has been sent to forensic lab. It appears that at the time of search video shooting has been done and the said shooting has been transferred to one Digital Versatile Disc (DVD) of which hash value was taken. It also appears that, that Digital Versatile Disc (DVD) has not been made available to the applicant. This is total high handed act on the part of the police machinery to

carry out the investigation or the entire episode. Even at this prima facie stage it appears to be at the directions of somebody. Another aspect is that when Sub-Divisional Police Officer is stated to be the witness and in fact he was present at the spot, yet the matter has been investigated by Police Inspector who is a lower rank officer and what the said Police Inspector has done is to just make the statements of the witnesses 'copy-paste'. Taking into consideration this material on record, there appears to be prima facie substance in the say of the applicant that the entire action was taken with political vendetta to prevent him and / or his wife to reach to the venue where 'No Confidence Motion' against her was moved.

8. Now the entire investigation is over and charge-sheet is filed, further physical custody of the applicant is not required, therefore he deserves to be released on bail. Hence, following order.

**ORDER**

- 1) Application stands allowed.
- 2) Applicant Shashikant @ Baban s/o Pandurang Gite, who has been arrested in Crime No.04 of 2021, registered with Parali City Police Station, District Beed, for the offence punishable under Section 143, 147, 149, 188, 269, 270, 332, 353, 506 of Indian Penal Code,

under Section 3, 4, 25 of Indian Arms Act, under Section 135 of Maharashtra Police Act, under Section 51 (b) of Disaster Management Act and under Section 11 of Maharashtra COVID-19 Regulations, 2020, he be released on P.R. of Rs.15,000/- (fifteen thousand).

3) The applicant shall not tamper with the evidence of the prosecution in any manner.

4) He shall not indulge in any criminal activity.

5) Bail before Trial Court.

6) The observations made by this Court while allowing this application are prima facie observations, the Trial Court should decide the matter on its merits taking into consideration the evidence that would be led and not to get influenced by any of the above observations.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-*