

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 503 OF 2021

Ravindra Singh s/o Asha Singh Bungai,
Age 50 years, Occ. Business
(at present holding the post of Secretary
Gurudwara Sachkhand Board, Nanded),
R/o 4-1-525, Asha Jeet Complex,
Shahid Pura Chowk, Nanded, Tq. &
Dist. Nanded.

... **Applicant.**

VERSUS

1) The State of Maharashtra,
Through the incharge Vazirabad
Police Station, Nanded, District Nanded.

2) The Superintendent of Police,
Nanded.

... **Respondents.**

...

Senior Counsel for the Applicant : Mr. R. S. Deshmukh.
APP for the Respondent/State : Mr. V. M. Kagne.

CORAM	:	MANGESH S. PATIL, J.
DATE	:	15.06.2021.

PER COURT :

Apprehending his arrest in connection with Crime No. 114/2021 registered with Vazirabad Police Station, Nanded, District Nanded for the offences punishable under Section 353, 307, 120B, 326, 324, 323, 332, 333, 336, 427, 143, 147, 148, 149, 269, 270, 271, 186, 188, 504 and 506 of the Indian Penal Code, under Section 4/25 of the Arms Act, Under Section 3, 4 of Prevention of Damage to Public Property Act, under Section 7 of Criminal Law (Amendment) Act, under Section 51(b) of the Disaster Management Act and Section 135, 37(1)(c) of Maharashtra Police Act, the applicant is seeking bail under Section 438 of the Code of Criminal Procedure.

2. In sum and substance the allegations, as can be discerned from the F.I.R. and the papers of investigation are to the effect that the District Magistrate had promulgated a notification under Section 144 of the Code of Criminal Procedure dated 21.03.2021 prohibiting any gathering in a public place from the mid night of 24.03.2021 to 04.04.2021.

3. It is a religious convention of the Shikh community to celebrate Holi with a peculiar religious procession called 'Halla Bol'. Obviously, in view of the promulgation of the order under Section 144 of the Code of Criminal Procedure the Office bearers of Sachkhand Gurudwara Nanded took up the matter and requested the police to permit them to take out a procession. The permission was refused.

4. In order to enforce the order promulgated by the District Magistrate and to maintain the law and order, number of police persons were deployed, barricades were erected and all the necessary arrangements were made to prevent any procession being taken out from Sachkhand Gurudwara, Nanded.

5. Unfortunately, as anticipated by police, at about 17.30 hours of 29.03.2021 a mob came out of the premises of Sachkhand Gurudwara from Gate No.1. They indulged in sloganeering. The persons from the mob were branding swords, sticks, spears. They dismantled the barricades and brandishing their swords threatened to kill the police personnel. A bodyguard of the Superintendent of Police was hit with a sword. A Sub Divisional Police Officer was also hit with a wooden log. Few other police personnel also sustained injuries with swords, sticks and stones. The police vehicles were damaged. It is alleged that the persons from the mob were instigating each other.

6. It is alleged that the applicant who happens to be the Secretary of the Gurudwara Board was also involved in the crime. The incident had taken place by hatching a conspiracy of which he was a prime member. He incited

the members of the Shikh community to take out the procession and to assault the police personnel if it was prevented. It is also alleged that on the date of the incident he ingeniously had gone to Mumbai but was in constant touch with the other accused persons from the mob at Nanded.

7. It is pertinent to note that in the F.I.R. it has been mentioned that the applicant was present and was a member of the mob, however, as a result of the investigation it transpired that he was not personally present at the scene of the crime and was present in Mumbai.

8. The learned Senior Advocate Mr. Deshmukh at the outset would submit that the very fact that in the F.I.R. it has been mentioned that he was the member of the mob which is an incorrect statement of fact clearly demonstrates that the police machinery has some ulterior motive to somehow implicate him in the crime. It demonstrates that the police machinery is acting in a prejudicial manner and the applicant is being falsely implicated.

9. The learned Senior Advocate takes me through the papers annexed to the application and endeavors to demonstrate as to how the applicant being Secretary of the Gurudwara Board was interested in persuading the persons from Shikh community to perform the 'Halla Bol' ceremony within the premises of the Sachkhand Gurudwara. He would point out that even the meeting of the Gurudwara Board was held. It was attended by Senior Police Officers from Nanded and even a resolution was passed to hold the ceremony within the premises of Sachkhand Gurudwara, Nanded. The learned Senior Advocate would therefore submit that in spite of such strenuous efforts put in by the applicant to persuade the persons from Shikh community not to take out the procession, it was not in his hands and the mob gathered and became unruly and for which he cannot be blamed more so when he was in Mumbai.

10. Learned Senior Advocate would further point out that in fact the

applicant has been involved in social work and since the Gurudwara Board was to establish a Covid Centre, he along with few office bearers of the Guduwara Board has gone to Mumbai. It is in his absence that the incident has taken place. There is nothing to be discovered by or recovered from him. He is ready to cooperate the Investigating Officer. His custodial interrogation is not necessary. He is not a criminal. Though few cases are filed against him, except one which is still pending he has been acquitted. He therefore be granted anticipatory bail.

11. Lastly, the learned Senior Advocate would refer to the principles enunciated by the Supreme Court in the case of *Arnab Manoranjan Goswami Vs. The State of Maharashtra and Ors., in Criminal Appeal No. 742/2020 (Arising out of SLP (Cri) 5598/2020) dated 27.11.2020* and particularly the observations from paragraph No. 57, 60, 62, and 63 of the judgment. He would also refer to the principles laid down by the Constitution Bench of the Supreme Court in the case of *Sushila Aggarwal and others Vs State (NCT of Delhi) and another; 2020(5) Supreme Court Cases 1;* and particularly the observations from paragraph No. 85 and 91. He would submit that applying the principles laid down in these judgments, the applicant deserves to be granted anticipatory bail.

12. The learned A.P.P. Mr. Kagne would strongly oppose the application. He would submit that though there is some error or mistake in as much as the F.I.R. mentions about the applicant's presence at the scene of the crime but in fact he was in Mumbai, it is a sheer case of mistaken identity since it was a mob of 300 to 400 persons. The error on the part of the Police Officer lodging the F.I.R. deserves to be overlooked at this juncture. It is as a result of investigation that it now transpires that the applicant was in Mumbai at the relevant time but simultaneously has played pivotal role in inciting the mob to hold the procession by hatching a conspiracy. There is Call Data Record to demonstrate that though he was in Mumbai he was in constant touch with the other accused at Nanded. Since the conspiracies are hatched

in secrecy, absence of the applicant at the crime scene is irrelevant.

13. Learned A.P.P. would further submit that the crime is serious. In the public interest the District Magistrate had promulgated an order under Section 144 of the Code of Criminal Procedure in view of the rise in the Covid cases at Nanded. The public interest was paramount. Ignoring it the procession was taken out in utter disregard of not only the order promulgated under Section 144 of the Code of Criminal Procedure but by putting the entire society at the risk during this pandemic.

14. Learned A.P.P. would further point out that there is every room to believe that the applicant is actively involved in hatching the conspiracy. He is a Secretary of the Gurudwara Board and was interested in having the procession. A permission was sought to take out the procession but it was refused by the Police. Even last year, in order to celebrate similar religious ceremonies of the Takhat Isnan, Dipmala Mahalla, Gurta Gaddi Kirtan and Gurta-Gaddi Sampathi, Kirtan Darbar, Nagar Kirtan on the eve of Dussehra, by the order dated 23.10.2020 in Writ Petition No. 7303/2020, this Court had granted permission to hold the ceremonies in a specific manner. Several conditions were put but none was obeyed. This conduct of the applicant and the Gurudwara Board is eloquent enough to demonstrate that the applicant is not a man worthy of credence. Since the matter is under investigation, the Investigating Officer deserves to be extended sufficient opportunity to interrogate him, may be by taking him into custody.

15. I have carefully gone through the papers of the investigation as also papers annexed to the application. With respect, one need not delve into the subject of the principles governing the grant of anticipatory bail which have been reiterated time and again and even elaborately discussed and laid down in the case of Sushila Aggarwal (supra) and the principles for grant of bail as laid down succinctly by the Supreme Court in the case of Arnab Goswami (supra).

16. At the outset it is necessary to note that as has been rightly submitted by the learned Senior Advocate Mr. Deshmukh, the principles for grant of bail laid down in the case of Arnab Goswami (supra) will not be strictly applicable while considering the request of the applicant for anticipatory bail in as much as, the principles governing grant of bail under Section 439 of the Code of Criminal Procedure and that of grant of anticipatory bail under Section 438 of the Code of Criminal Procedure are essentially different. Therefore bearing in mind the principles which regulate the power of Court to grant anticipatory bail under Section 438 of the Code of Criminal Procedure as laid down in the case of Sushila Aggarwal (supra) if one examines the matter in hand it transpires that it is indeed a serious matter. One need not over emphasize the public interest in the current pandemic which should invariably be a paramount consideration. Individual rights and rights of a particular section of the society must give way to a larger public interest. If the District Magistrate Nanded had promulgated an order under Section 144 of the Code of Criminal Procedure in the public interest in anticipation of the event which was to occur on the day of Holi in view of the religious convention prevalent in the Shikh community, it was expected that it ought to have been strictly obeyed by every one.

17. The applicant being at the helm of the affairs of the Gurudwara Board at Nanded had taken initiative and the Board had made an attempt to solicit permission to take out the procession. The permission was rejected for the obvious reasons, which may not be far to seek. In spite of such refusal, perhaps by exerting influence, a meeting of the Gurudwara Board was held, some Police Officers were invited and a resolution was passed to hold the procession within the premises of Sachkhand Gurudwara. One cannot comprehend as to how once the permission to take out the procession was refused the Police Officers were invited and could attend the meeting in whatever capacity. The fact remains that there was an order of District Magistrate promulgated under Section 144 of the Code of Criminal

Procedure, besides the permission to take out the procession was specifically refused.

18. Interestingly, in spite of being an office bearer of the Gurudwara Board who was at the forefront in applying for permission to take out the procession and had participated in the meeting of the Gurudwara Board but had ingeniously instead of attending the religious function at Nanded the applicant has gone to Mumbai.

19. Pertinently, as recently as in the month of October 2020 he had filed the Writ Petition mentioned herein above on behalf of the Gurudwara Board seeking sanction of this Court to perform some religious ceremonies in a public place. If such is his religious proclivity it is indeed startling that instead of attending the 'Halla Bol' procession to be celebrated at Nanded he had gone to Mumbai. This circumstance in my considered view is highly suggestive of he being directly or indirectly involved in the alleged incident.

20. A lame attempt was made by the learned Senior Advocate to demonstrate that he had gone to Mumbai on a mission to establish a Covid Hospital. We do not know what was the exact reason why the applicant had gone to Mumbai. That would be a matter of evidence. The fact remains that instead of participating in the religious function that was performed at Nanded he had chosen to go to Mumbai. There is every room to believe that either he was perceiving that the Halla Bol procession would take place in breach of the order of the District Magistrate or had instigated the members of the community to hold the procession but had conveniently tried to save his skin.

21. The aforementioned circumstance in my considered view clearly justifies the inference being drawn by the investigating machinery about his being actively involved in commission of the crime which in all probability must have taken place by hatching a conspiracy. The conspiracies are hatched in secrecy and his custodial interrogation would be highly

imperative if all the links in the chain are to be traced. There are Call Data Records, some of which are indicative of his being in touch with the co accused on and around the date of the incident.

22. The applicant's previous conduct is also relevant. It is being alleged that in spite of soliciting order of this Court for celebrating certain religious functions, the conditions were not obeyed. He has been prosecuted for some such offences earlier in the recent past as well.

23. Learned Senior Advocate Mr. Deshmukh would submit that the investigating machinery is selectively targeting the persons involved. He would point out that so far as couple of accused who had tampered the CCTV footage in the Gurudwara premises, to obviate identification of the persons involved, have been allowed to go scot free by the police but the applicant who was not even personally present was initially named in the F.I.R. but subsequently the version is changed and now a theory of conspiracy is being invoked having found that he was at Mumbai.

24. Though the submission is attractive, it needs to be borne in mind that, it was an incident involving hundreds of persons. Even if the applicant named in the F.I.R. as member of the mob, it could be a matter of mistaken identity. Having found during the course of investigation that he was in Mumbai but was actively involved and there was an element of conspiracy, one cannot at this juncture blame the police machinery and the Investigating Officer for changing the line of allegations.

25. So far as the fact of allowing the couple of servants of the Sachkhand Gurudwara to go scot free in spite of having indulged in removing the CCTV so as to tamper the evidence, one need not, without there being any substance come to the conclusion as to sufficiency or otherwise of the material against them. For whatever grounds which found favour with the investigating officer he must have allowed them to go scot free. However, if he has sufficient material to infer about involvement of the applicant in

hatching the conspiracy, the applicant cannot be allowed to take benefit on the ground of parity.

26. Considering the aforementioned facts and circumstances, the applicant is not entitled to derive any benefit from the decision of the Supreme Court in the case of Sushila Aggarwal (supra). He is not entitled to the discretionary relief.

27. The Application is rejected.

(MANGESH S. PATIL, J.)

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