

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

918 ANTICIPATORY BAIL APPLICATION NO.1052 OF 2020

AAKASH JAGANNATH BORSE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.P. Raje, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04<sup>th</sup> JANUARY, 2021.

**ORDER :**

1 Present applicant is apprehending his arrest in connection with Crime No.27/2019 registered with Mohadi Police Station, Dist. Dhule, for the offence punishable under Section 395, 435, 504, 506, 427 of the Indian Penal Code, and therefore, he has filed present application under Section 438 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. V.P. Raje for the applicant and learned APP Mr. S.Y. Mahajan for the respondent.

3 It has been vehemently submitted by the learned Advocate for the applicant that the applicant is a labour and 21 years old boy having

responsibility of his family. He has been unnecessarily roped in the said offence, merely because he resides in the same vicinity. There was dispute between the husband of the informant and the co-accused, but the present applicant has nothing to do with the same. Charge sheet has been filed in the matter, therefore, investigation is over. The ingredients of Section 395 of Cr.P.C. are not at all attracted against the present applicant. All the material allegations are made against co-accused Rahul Marathe (Mind). As the custody of the present applicant is not required, he be released on anticipatory bail.

4 Per contra, the learned APP strongly opposed the application and submitted that the present applicant has gone absconding. The ornaments worth Rs.27,000/- have been stolen from the house of the informant. Accused Nos.1 to 5 were arrested, however, no recovery could be done at their instance. The present applicant might be having knowledge about those ornaments, and therefore, his custody is required. In fact, there are two groups in Mohadi village, one is of the informant and another is of the accused. All the time they want to over power each other. They use sticks, wooden logs, swords and even country made pistols in such disputes. They are creating law and order situation. After accused No.1 Rahul Mind was released, he has been murdered on 18.07.2020 by the rival group i.e. from

informant's group. Physical custody of the present applicant is required.

5           At the outset, it is to be noted that the investigation part appears to be over and charge sheet has been filed before Judicial Magistrate First Class i.e. Regular Criminal Case No.371/2019. The present applicant has been shown to be absconding. We are required to consider as to what are the allegations against the present applicant in the FIR. FIR is lodged on 04.03.2019 in respect of incident dated 02.03.2019 at 01.00 a.m. According to the informant, when she along with her children were at home sleeping and her husband was not at home, she found abuses given outside the house. She along with her co-sister went outside and found that Rahul Mind was along with Bansi Gosavi, Mayur Atole, Ganesh Jagtap, Sagar Dhumal, Akash Borse (present applicant) were abusing her husband. They were armed with iron rod and sticks. The informant further says that the accused persons caused damage to the Indica car as well as motorcycle. The motorcycle was put to fire and then Rahul Mind told that she is giving false information that her husband is not at home, and therefore, they barged into her house. The door of iron cupboard was damaged and from that ornaments worth Rs.27,000/- were taken away.

6           Perusal of the First Information Report would show that specific role is attributed to the applicant, at the point when he was stated to be

outside the house. It is stated that he was armed with some weapon, but then thereafter no specific role is attributed and it is stated that all the accused persons caused damage and took away the ornaments. Now, merely because the discovery is not made at the instance of co-accused, present applicant cannot be kept behind bars for the purpose of discovery only. Case is made out to grant anticipatory bail, however, subject to conditions. Hence, following order.

### **ORDER**

1           Application is hereby allowed.

2           The ad-interim protection, granted by this Court earlier to applicant vide order dated 10.11.2020, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. Aakash Jagannath Borse, in connection with Crime No.27/2019 dated 04.03.2019 registered with Mohadi Police Station, Dist. Dhule, for the offence punishable under Section 395, 435, 504, 506, 427 of the Indian Penal Code, he be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3           Though the charge sheet has been filed by showing the present

applicant as absconding; yet, for the investigation under Section 173(8) of the Code of Criminal Procedure the applicant shall remain present before the Investigating Officer on every Monday, Wednesday and Saturday between 11.00 a.m. to 05.00 p.m., till 31.03.2021.

4            Investigating Officer may inform the Court where the charge sheet is filed to cancel the attendance, if the investigation as against the present applicant would be over before 31.03.2021.

5            The applicant shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.

**( Smt. Vibha Kankanwadi, J. )**

agd