

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1175 OF 2020

Tejas s/o Suresh Salwe,
Age 25 years, Occupation Student,
R/o Tirupati Park, Madhumalni Apartment,
E-5, N-4, Aurangabad.**Applicant**

VERSUS

The State of Maharashtra,
Through P.I. Police Station, Mukundwadi
Dist. Aurangabad.**Respondent**

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Advocate for Applicant : Mr. G. S. Shete.
APP for Respondent-State : Ms. R. P. Gour.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-01-2021.

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.460 of 2017, registered with Mukundwadi Police Station Dist. Aurangabad for the offence punishable under Section 394, 201 read with 34 of Indian Penal Code, and therefore, he has filed the present application under Section 438 of Code of Criminal Procedure.
2. Heard learned Advocate Mr. G. S. Shete for applicant and learned Additional Public Prosecutor Ms. R. P. Gour for respondent-State.

3. It has been vehemently submitted by the learned Advocate for applicant that the present applicant has been falsely involved. In fact perusal of the First Information Report would show that it was lodged against two unknown persons. The charge-sheet has been filed against one Veer Rekha Sawale and present applicant. Said Veer is accused No.1 to whom anticipatory bail was already granted and present applicant is accused No.2 against whom charge-sheet is filed under Section 299 of Code of Criminal procedure. The present applicant is aged 25 years and he is a student. He was not absconding anywhere. He was normally attending his classes. Informant is a son of political leader and, therefore, the police intended to show something. The informant has not narrated the real occurrence of the case but has given a colour of robbery to the same. Only scuffle had taken place. The informant was very much knowing the applicant and under such circumstance could not have lodged the report against unknown person. Now when the charge-sheet is also filed the custodial interrogation of the present applicant is not required. The present applicant had filed Criminal Bail Application No.888 of 2017 and it came to be rejected by learned Sessions Judge on 20-05-2017. The applicant was never called thereafter by the Investigating Officer. Further after the charge-sheet was filed when the applicant again approached to learned

Sessions Court with Bail Application No.1780 of 2020, he was granted ad-interim protection by order dated 12-11-2020. Condition was imposed that he should remain present before the Investigating Officer on 14th, 16th, 18th and 20th November 2020 and to remain present before the Investigating Officer as and when called. Accordingly he has attended the police station and has furnished the surety. He has cooperated with the investigation, yet his application has been rejected by the learned Additional Sessions Judge, and therefore, he had no option but to approach this Court.

4. Per contra, the learned APP submitted that the present applicant could not be traced when specific orders for arrest were given by the Investigating Officer to two police constables. On 10-07-2017 they had reported that the present applicant is not traceable. The Investigating Officer had no option but to file the charge-sheet under Section 299 of CrPC. As per the FIR the gold ring weighing 10 grams from the finger of the informant and amount of Rs.5000/- was forcibly taken away. The said recovery is yet to be done, and therefore, still investigation can go on under Section 173 (8) of Code of Criminal Procedure, custodial interrogation is therefore required.

5. At the outset, it is to be noted that the evidence that is filed for

filing the charge-sheet under Section 299 of Code of Criminal Procedure by the Investigating Officer is of only one day and the entire procedure appears to have not been adhered to. When the offence is registered in 2017 and the charge-sheet is filed on 09-07-2019, the account should have been given about the efforts taken to arrest the present applicant for two years and not of one day. Under such circumstance, the said fact cannot be taken against the accused.

6. Another fact that is also required to be noted is that in view of the ad-interim protection granted by the learned Additional Sessions Judge in Criminal Bail Application No.1780 of 2020 it appears that the present applicant came to be formally arrested and he states that he has furnished surety before the Investigating Officer on 14-11-2020. Therefore, there was no hurdle for the learned Additional Sessions Judge to grant the said application before him. It has been got confirmed from learned Additional Public Prosecutor who in turn had got it confirmed from the Investigating Officer that the present applicant had attended the police as directed in the ad-interim order passed by learned Additional Sessions Judge. Therefore, the applicant was made available for further investigation, yet it appears that no progress has been made by the investigating officer. Merely

because it has not resulted in recovery, it cannot be said that he is not entitled to the discretionary relief. There is no evidence produced by the Investigating Officer that even after the filing of the charge-sheet on 09-07-2019 till 12-11-2020 he had made any efforts to arrest the present applicant. When there was no seriousness on the part of the Investigating Officer to arrest the present applicant, the discretionary power of this court will have to be granted in faovur of the applicant, therefore he deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicant Tejas s/o Suresh Salwe, in connection with Crime No.460 of 2017, registered with Mukundwadi Police Station Dist. Aurangabad, for the offences punishable under Section 394, 201 read with 34 of the Indian Penal Code, he be released on P.R. and S.B. of Rs.15,000/- (fifteen thousand).
- 3) He shall not tamper with the evidence of the prosecution in any manner and shall co-operate with the investigation.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-