

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.54 OF 2022

SUNIL VISHWAMBHARRAO BHAROSE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. J. Salunke
APP for Respondent-State : Mr. N. T. Bhagat
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
31-01-2022**

**Date of Pronouncing The Order :
23-02-2022**

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.369 of 2021, registered with Purna Police Station, District Parbhani, for the offences punishable under Section 307, 326, 427, 143, 147, 148, 149, 506 of the IPC and Section 135 of Maharashtra Police Act.
2. Heard learned Advocate Mr. S. J. Salunke for applicant and learned APP Mr. N.T .Bhagat for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated, he has no nexus with the offence. In fact, since last 20 years the applicant is residing at Parbhani

for the purpose of education of his children. He had not gone to Purna on the day of incident. Further, only the first name of the present applicant is mentioned in the FIR and not the complete name. The incident is stated to have taken place on 13-10-2021, however, the offence came to be registered on 15-10-2021 i.e. after delay of two days. There is no plausible explanation for the delay in the FIR. As regards the other accused persons are concerned, it is contended that they were known to the informant. Then the question arises as to how the informant could miss the complete name of the applicant. It also appears that the informant himself had started altercation with the co-accused, and thereafter, the informant and his brother had assaulted co-accused Sachin Bharose, Raju @ Rajeshwar Bharose and Krushna Bhalerao by kicks and fists blows. But thereafter the FIR has been lodged by the informant by exaggerated version. Custodial interrogation of the applicant is not necessary taking into consideration the allegations as well as the statements. The applicant is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the delay can be explained even at the time of trial. Further, it can be seen that the informant as well as his brother, who was injured in the case, were admitted to hospital, and after informant

was stable, his statement has been recorded under the guidance of the Medical officer. It is recorded in the form of dying declaration, but fortunately informant is alive. He has clearly stated that one Sachin Bharose, Krushna Bhalerao and Raju Bharose came to his hotel at about 07.30 p.m. on 13-10-2021, they had dinner, but they were paying less amount than the bill, and therefore, there was altercation. Informant says that while going all those three persons, gave threats to the informant and stated that he would be seen by them. Thereafter, they returned at about 08.50 p.m. in a Balero vehicle along with one Omkar Bhalerao, who were holding iron rod and sticks. One more motorcycle on which one Nagesh bahlerao, Sunil and one unknown person came. Though it is stated that the informant is not knowing the full name of Sunil, yet specific act is attributed. Sunil assaulted informant as well as his brother Vishnu by stick on their legs. The stick used in the commission of the crime by the present applicant deserves to be recovered. Further, it is to be noted that the informant received injuries to his head and fractured of his hand. He was required to undergo the operation. His brother Vishnu also received severe injury to his head to which 12 stitches have been applied. Therefore, the offence is serious and in order to have proper and thorough investigation, his custodial interrogation is necessary. Possibility of tampering with the evidence, cannot be ruled out.

5. As the contents of the FIR are narrated earlier, they are not reproduced again here. It can be seen from the FIR that the incident is alleged to have taken place at two different time. Firstly at 07.30 p.m. it is stated that accused Sachin Bharose, Krushna Bhalerao and Raju Bharose had taken dinner, and as they were not paying the entire bill, there was altercation, and according to the informant, they left by giving threats to him. He then states that at 08.50 p.m. those persons came in Balerao with other persons and it is stated that the present applicant had come on motorcycle. It is to be noted that in the FIR he has been referred as only Sunil and it is stated that his full name is not known to the informant. It shows then that the informant was not knowing the applicant at any earlier point of time, then the question arises as to how he came to know about his first name also. Statements of the witnesses have been recorded and those witnesses whose statements have been recorded prior to 24-11-2021, have either stated that the informant and his brother were assaulted by certain persons or some of them have stated that a person by name Sunil was present. None of them had recognised that person as applicant will have to be explained by the prosecution. Even the statement of brother of the informant has been recorded on 02-11-2021 and he is also stating that one Sunil had assaulted him by stick on his legs. He

has also stated that he has no knowledge about the complete name of Sunil. Surprisingly in their statement under Section 164 of Cr.P.C. recorded by the learned Magistrate on 13-11-2021 also, they have not given the complete name of the present applicant. Prior to that, accused Raju Bharose, Sachin Bharose, Nagesh Bhalerao, Sandip Bhalerao, Omkar Bhalerao, Gajanan Nirgude and Krushna Bhalerao were arrested, but none of them appears to have taken name of the present applicant in their interrogation. All of a sudden, the name of the present applicant is appearing in the statement of so called eyewitness Dnyanoba @ Raju Digambar Bhosale which appears to have been recorded on 24-11-2021. Further, interesting part is that he appears to be the cook serving in the hotel of informant and his statement was not recorded from the date of FIR i.e. 15-10-2021 till 23-11-2021 for the reasons best known to the Investigating Officer. This witness then states that it was the applicant, that is by giving his full name, stated that he had assaulted the informant and his brother by wooden stick. Then the supplementary statement of the informant has been taken on 24-11-2021 stating that it was the applicant who was the person who had assaulted him and his brother with wooden stick. With this kind of evidence that has been collected up till now, there is no necessity of the custodial interrogation of the applicant. Making him available for the purpose of investigation by putting

condition of attendance, would suffice. No doubt, the informant and his brother appears to have received grievous injuries to their vital part of organs, however, even if for the sake of arguments it is accepted that it was the present applicant who had assaulted them by stick, it is stated by them that the assault was on the legs, and therefore, the application deserves to be allowed by imposing conditions. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of applicant Sunil Vishwambharrao Bharose, in connection with Crime No.369 of 2021, dated 15-10-2021, registered with Purna Police Station, District Parbhani, for the offences punishable under Section 307, 326, 427, 143, 147, 148, 149, 506 of IPC and Section 135 of the Maharashtra Police Act, 1951, he be released on PR of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).
- 3) He shall not tamper with the evidence of the prosecution in any manner, and shall not try to commit any offence.
- 4) He shall attend the concern police station on every Wednesday and Sunday in between 10.00 a.m. to 01.00 p.m., till filing of charge-sheet.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.