

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.70 OF 2022

MAHENDRA KASHINATH CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. G. R. Syed, Advocate for the applicant.
Mr. B. V. Virdhe, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01.03.2022

ORDER :-

. Present application has been filed under Section 438 of the Code of Criminal Procedure by the applicant, who is apprehending his arrest in connection with Crime No.1023 of 2021 registered with Nandurbar City Police Station, Dist. Nandurbar for the offence punishable under Section 135 of the Electricity (Amendment) Act, 2003.

2. Heard learned Advocate Mr. G. R. Syed for the applicant and learned APP Mr. B. V. Virdhe for the respondent - State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Perusal of the First Information Report lodged by Priyanka Raghu

Pujari, who is Junior Engineer, serving with Maharashtra State Electricity Distribution Company Limited (MSEDCL) at Kolda Section, would show that the team of MSEDCL had gone for inspection and it was found that the present applicant had taken illegal connection from the L.T. Pole Connection box for his house. According to the informant, the applicant has used 8078 units and committed theft of electricity of Rs.1,76,080/-. It is to be noted that the electricity cannot be stored or used later and cannot be recovered. Therefore, there was nothing to be recovered from the applicant. In spite of this fact, learned Sessions Judge, Nandurbar had rejected the anticipatory bail application filed by the present applicant. It appears that submission was made by the learned APP before the learned Sessions Judge that the applicant would encourage potential offenders and custodial interrogation of the applicant is necessary to unearth the crime and also to find out involvement of any other person, had weighed the learned Sessions Judge, Nandurbar to reject the application. These appear to be superficial grounds for rejecting the application. In order to get information in respect of co-accused, custodial interrogation cannot be necessary. It will have to be unearth by the police with their professional skills. As regards theft of electricity is concerned, definitely, in the inspection, concerned Junior Engineer would have drawn

panchanama and would have seen from where the connection was taken, how it was taken. Further, the FIR does not say that after considering the fact that the applicant is committing theft of electricity, the said connection which he had taken unauthorizedly was cut. But definitely it would have been cut by the informant and her team because they could not allow the theft to go on. Further, what has not been considered by the learned Additional Sessions Judge is that the offence is compoundable under the Electricity Act. When the law requires the Courts to exercise its powers judiciously, then the judges are not expected to find out reasons to reject the applications. This cannot be the way to exercise those powers. No doubt, use of exercise of those powers does not mean that each and every application should be allowed, but then when in this specific case, there was no question of recovery of material or stolen article, the application ought to have been allowed. This Court is aware that this Court is not sitting as an Appellate Court, but exercising concurrent jurisdiction, this is an attempt to make the Sessions Judges and Additional Sessions Judges to exercise their powers in deserving cases and not to find out reasons to reject. Such attitude is unnecessarily increasing the burden on this Court.

4. Independently, taking into consideration the contents of the FIR and the fact that nothing is required to be recovered from the applicant,

the applicant is having fixed place of abode and no such evidence has been produced to show that there is criminal antecedents against him, he deserves to be released on anticipatory bail. This Court had granted interim protection to the applicant on 21.01.2022. It deserves to be confirmed. Hence, the following order :-

ORDER

- I) The Application stands allowed.
- II) The ad-interim protection granted earlier by this Court to the applicant vide order dated 21.01.2022 stands confirmed and made absolute. In other words, in the event of arrest of applicant – Mahendra Kashinath Chaudhari, in connection with Crime No.1023 of 2021 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Section 135 of the Electricity (Amendment) Act, 2003, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each, if already not released.
- III) The applicant shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.
- IV) He should cooperate with the investigation and shall remain present before the Investigating Officer as and when called.

[SMT. VIBHA KANKANWADI, J.]

scm