

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 ANTICIPATORY BAIL APPLICATION NO.143 OF 2022

ADHIKAR BARKU PATIL

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. C.C. Deshpande, Advocate for the applicant

Mr. B.V. Virdhe, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th MARCH, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.12/2022 dated 10.01.2022 registered with Dhule Taluka Police Station, Dist. Dhule, for the offence punishable under Section 353, 323, 504, 506 of the Indian Penal Code, 1860 and under Section 135 of the Electricity Act, 2003.

2 Heard learned Advocate Mr. C.C. Deshpande for the applicant and learned APP Mr. B.V. Virdhe for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant is innocent and has not committed any offence. The informant

and other officers were trying to cut the electricity supply given to the house of the applicant. Applicant had then requested the informant and the other staff that without giving any notice they cannot cut the electricity. The informant was disconnecting the electricity supply of the house of the applicant arbitrarily. He was not trying to commit theft of the electricity by putting hook to the over head wires. The learned Advocate appearing for the applicant submits that since the informant has started the video shoot he had raised objection, taking into consideration that there were ladies in the house; informant got annoyed and lodged the false report. The applicant has not committed any offence, however, if at all the facts reveal that he has committed any offence; the custody of the applicant is not required for the purpose of investigation, as nothing is required to be seized at his instance. The applicant is repenting for that. If at all this Court comes to the conclusion that there appears to be a prima facie case, the applicant would show his bona fides by deposit of money.

4 Per contra, the learned APP strongly opposed the application and submitted that already another offence vide Crime No.181/2019 has been registered against the applicant, for the offence punishable under Section 135 of the Electricity Act. That means, on the second occasion he was found stealing the electricity by means of hook. He does not deserve any sympathy.

5 At the outset, it is to be noted that when the matter was earlier heard and it was considered that in the copy of the First Information Report, which was given to the accused from office of Judicial Magistrate First Class, there was some mistake, as a confusion was created exactly on which date the offence has been registered. In First Information Report there is a mention of incident dated 22.06.2021, whereas according to the informant, the team had visited the house of the applicant on 10.01.2022. The Investigating Officer was directed to remain present, so also, the concerned Police Inspector. Accordingly, they were present before this Court and they tendered unconditional apology for the typographical mistake. It is then stated that when the mistake was realized it was corrected and it was before the copy of the First Information Report was forwarded to Magistrate under Section 154 of the Code of Criminal Procedure. Inadvertently the correction remained to be made in the copy, which was sent to Magistrate and report to that effect has been filed. Instead of 22.06.2021 it should be read as 10.01.2021. The purpose, for which the copy of the First Information Report is forwarded to the Magistrate is to see that there is no manipulation in the contents of the First Information Report. If an incorrect copy of the First Information Report is sent to Magistrate, then, it cannot be said that there is a proper compliance. However, that will not give any advantage to the applicant. His case will have to be considered on its own merits. When

unconditional apology has been tendered by the Investigating Officer as well as the concerned Police Inspector it can be accepted, however, with caution that they should be careful in their discharge of duties.

6 Crime No.181/2021 under Section 135 of the Electricity Act is pending against the present applicant and it appears to be on the basis of First Information Report lodged by present informant himself. It appears from the contents of the First Information Report that the applicant had tried to commit similar offence after an interval. Now, nothing can be recovered from him since the theft is of electricity. The papers of the police would show that major part of the investigation is over, statement of witnesses have been recorded, panchnama of the spot has been executed, so also, at the time of the panchnama the hook with the wire allegedly used in the commission of crime has been seized. One more chance deserves to be given to the applicant by releasing him on anticipatory bail. At any point of time, the act of the applicant, though it is in the form of allegation right now, using criminal force by slapping to the informant cannot be justified. In a way, he is repenting and since it is the second offence he is alleged to have committed, he should show bona fides. The liberty cannot be granted to the applicant free of costs, when it is alleged to be the repetitive offence. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant viz. **Adhikar Barku Patil**, in connection with Crime No.12/2022 dated 10.01.2022 registered with Dhule Taluka Police Station, Dist. Dhule, for the offence punishable under Section 353, 323, 504, 506 of the Indian Penal Code, 1860 and under Section 135 of the Electricity Act, 2003, he be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 Applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

4 He should cooperate with the investigation.

5 Applicant to deposit amount of Rs.25,000/- (Rupees Twenty Five Thousand only) to the High Court Legal Service Sub-Committee, Aurangabad, within a period of one week.

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