

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.350 OF 2022

1. Sagar s/o Kamaji Khallal
2. Ganesh s/o Sriram Suryawanshi ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. P. S. Anerao, Advocate for applicants.

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

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 12.04.2022

Pronounced on : 28.04.2022

ORDER :-

1. The applicants are apprehending their arrest in connection with Crime No.10 of 2022 registered with Chudawa Police Station, Dist. Parbhani for the offences punishable under Sections 353, 379 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. P. S. Anerao for the applicant and learned APP Mr. B. V. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that the applicants are innocent and have been falsely implicated. There is apparent delay in lodging the FIR and, therefore, possibility of concoction cannot be ruled out. Co-accused Devanand @ Pappu

Gangadhar Suryawanshi and Nikant @ Sriram Suryawanshi came to be arrested on 01.02.2022 and they have been released on regular bail and, therefore, as a rule of parity also, the applicants deserve to be released on bail. Perusal of the FIR would show that the role attributed to the applicants is vague. There is omnibus statement against the present applicants. Both the applicants belong to village Daryapur and except the friendship with the co-accused, there is nothing. In fact, the FIR came to be lodged against one Pappu Suryawanshi, Hamu Patil and two unknown persons. The applicants cannot be said to be those two unknown persons. The applicants are having permanent place of abode. They are ready to abide by the terms of the bail.

4. Learned Advocate for the applicant has relied on the decision in ***Ravi Bhanudas Pawar Vs. The State of Maharashtra***, [Anticipatory Bail Application No.1366 of 2018] decided by this Court on 16.01.2019, wherein for the offence punishable under Sections 353, 379, 506(2) read with Section 34 of Indian Penal Code and other Sections, this Court had granted bail.

5. Learned APP strongly opposes the application and submitted that the present applicants are from the gang of sand mafias and they had attacked the police party. After one person disclosed his name as Pappu Suryawanshi, now his name is transpired as Ganesh Suryawanshi i.e.

applicant No.2. Further, when the learned Additional Sessions Judge, Parbhani rejected the anticipatory bail, applicant No.1 had given a phone call on 04.04.2022 from the mobile phone of one Pradip Parve, who is also having criminal record and gave threat to the Investigating Officer that as to why he has not allowed his anticipatory bail application to be allowed by the learned Sessions Judge. He also told that now the application is pending before this Court and if the favourable say is not given, then he would be killed by sword. Similar kind of phone call was given by applicant No.1 to A.S.I., Bachewad. Therefore, another offence vide Crime No.43 of 2022 under Sections 307, 353, 332, 186, 507, 504, 506 read with Section 34 of Indian Penal Code and under Section 4/25 of the Arms Act has been registered and it is in respect of the incident dated 04.04.2022 and at that time, not only applicant No.1, but also said Pradip Parve and one more person were on the motorcycle and present applicant No.1 had tried to give blow of sword on the Investigating Officer. Therefore, the said criminal background of the applicants can be seen and, therefore, they do not deserve anticipatory bail.

6. At the outset, it is to be noted that as regards the incident dated 01.02.2022 is concerned, the FIR has been lodged by police constable Santosh Sanap, who was along with the patrolling party. They had

received a tip that a tipper filled with sand is being transported and, therefore, they were on road by hiding their presence to apprehend the said vehicle. Then around 00.45 hours on 01.02.2022, a tipper came and the tipper driver was asked to stop the vehicle. The driver came down the vehicle and the police introduced himself as well as the panchas. They asked him about the sand being carried in the said tipper, at that time, on one motorcycle two persons came. They started arrogantly asking police as to how they can apprehend the vehicle. When they were asked about their names, intentionally full name was not given. One told that he is Pappu Suryawanshi and another person asking that they should leave the vehicle and he i.e. Hammu Patil Dariyapurkar is saying so. After taking advantage of darkness and without giving the key of tipper, by pushing the police officers, the motorcycle driver as well as the tipper driver managed to flee away from the spot.

7. The police papers show that the said person transpired to be one Devanand @ Pappu Gangadhar Suryawanshi, who is the tipper driver and one Nikant @ Hamu Sriram Suryawanshi is the owner of tipper. They were arrested on 01.02.2022. At the time of lodging the FIR, it is also against two unknown persons and naturally it appears that their names would have been revealed during the interrogation of the

arrested persons. Their role was already attributed in the FIR.

8. What has happened subsequently is also required to be considered here. Now, there are documents on record to show that on 04.04.2022, there was a call on the phone of P.S.I. Pandit of Chudawa Police Station, who is Investigating Officer and it is stated that, the said mobile phone from which he has received phone call, is in the name of Pradip Parve, who is having criminal antecedents and from that mobile, present applicant No.1 had called and gave threat. Thereafter on the same day i.e. on 04.04.2022 at about 17.15 hours, another incident took place. Applicant No.1 and said Pradip Parve along with another person came on motorcycle and when the Investigating Officer had tried to stop them, applicant No.1 had tried to assault him by sword while he was on motorcycle, but he could manage to duck the said assault. Another offence has also been therefore registered against applicant No.1. There are about 7 offences against applicant No.1, one of them is under Section 307 of Indian Penal Code read with Section 34 of Indian Penal Code and under Sections 4, 5 of Arms Act vide Crime No.73 of 2019. Two are from Sawangi Police Station, Pune and Pimpri Police Station, Pune which are under Indian Penal Code. Further three offences under Section 65(e) of Maharashtra Prohibition Act are also pending. When such act is done and there is threat to the prosecution witnesses though

he might be a police person, there is no question of granting extraordinary discretionary relief to the applicants. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm