

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 ANTICIPATORY BAIL APPLICATION NO.1589 OF 2021

SAGAR @ BALU BABASAHEB LOKHANDE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. R.R. Karpe, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th JANUARY, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.478/2019 dated 10.08.2019 registered with Jamkhed Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 341, 385, 507, 506(2) of the Indian Penal Code, 1860 and under Section 3, 5 punishable under Section 25 of the Arms Act, 1959.

2 It has been vehemently submitted on behalf of the applicant that now the investigation is over and charge sheet is also filed, therefore, the physical custody of the applicant is not required for the purpose of

investigation. As regards the applicant is concerned, the First Information Report does not disclose his name. It is only on the basis of statement of co-accused it appears that the name of the present applicant has been implicated. Nothing is required to be seized at the instance of the present applicant. He deserves to be released on anticipatory bail.

3 Per contra, the learned APP strongly opposed the application and submitted that the applicant was absconding and, therefore, the charge sheet came to be filed under Section 299 of the Code of Criminal Procedure against him. It has been disclosed by accused No.1 in his statement under Section 27 of the Indian Evidence Act that the present applicant was along with him when the offence was committed.

4 At the outset, it is to be noted that investigation is over and charge sheet is also filed. The charge sheet is filed against four named persons and two unknown persons. Only one accused has been arrested i.e. accused No.1 Sagar Gavasane on 06.10.2020. As against the other accused persons, the charge sheet has been filed under Section 299 of the Code of Criminal Procedure. Perusal of the First Information Report would disclose that it was against accused No.1 Sagar Gavasane, accused Amol Kale and accused Balwan Shinde. The present applicant was not named. No doubt, it

is stated that Sagar Gavasane was holding pistol and it was pointed out to the informant and the amount was demanded and it is then stated that the other three persons were holding sword and others were holding sticks. There is no statement that one of the other three persons holding sword had caused any assault by means of said sword to the informant. Sagar Gavasane has discovered one sword and country made pistol. His statement under Section 27 of the Indian Evidence Act and discovery thereof was on 10.10.2020. Since then, that is, after the disclosure of the name of the present applicant how many times the Investigating Officer had made attempts to arrest him is not shown by the prosecution. Interesting point to be noted is that two notices have been annexed with the charge sheet, which are stated to be issued on 09.02.2020 by the API to accused Amol Kale and accused Balwan Shinde. But it can be seen that it appears to be the typographical mistake, because prior to 09.02.2020 the offence itself was not registered. It ought to have been 09.02.2021, but then there is no explanation by the prosecution as to why no such notice was given to the present applicant. If his presence was not required till the filing of the charge sheet, then, it cannot be said that now his custodial interrogation is required. Therefore, in view of decision by Hon'ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another in Special Leave to Appeal (Cri.) No.5191 of 2021** decided on 07.10.2021, when no attempts were made by the investigation to

arrest the accused and it proceeds to file the charge sheet, then, it can be considered that the physical custody of the applicant is not required for. Another fact to be noted is that before filing charge sheet under Section 299 of the Code of Criminal Procedure; which is in fact an enabling provision to the Court to record the evidence in absence of an accused which has gone absconding and it does not entitle *per se*, the investigating agency to file charge sheet under that section, proceedings under Section 82 of the Code of Criminal Procedure were not undertaken. Therefore, on this count also the discretion will have to be used in favour of the accused. He deserves to be released on anticipatory bail. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of applicant viz. Sagar @ Balu Babasaheb Lokhande, in connection with Crime No.478/2019 dated 10.08.2019 registered with Jamkhed Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 341, 385, 507, 506(2) of the Indian Penal Code, 1860 and under Section 3, 5 punishable under Section 25 of the Arms Act, 1959, he be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor shall try to tamper with the evidence of prosecution, in any manner.

4 He shall cooperate with the investigation.

5 He should attend the Police Station, Jamkhed on every Tuesday between 10.00 a.m. to 02.00 p.m. till 28.02.2022, in order to facilitate the Investigating Officer to make further investigation under Section 173(8) of the Code of Criminal Procedure, 1973, if he desires.

(Smt. Vibha Kankanwadi, J.)

agd