

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 703 OF 2022

Santosh Prabhakar Dalvi and Anr. .Vs. The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr S. G. Varshani, Advocate for the applicants
Mr S. M. Ghodeswar, APP for the State

CORAM : G.A. SANAP, J.
DATE : OCTOBER 18, 2022.

(1) Heard.

(2) The applicants, who are accused Nos. 2 and 5, apprehend the arrest in Crime bearing No. 530 of 2022 registered at Digras Police Station, District Yavatmal for the offences punishable under Sections 143, 147, 148, 149, 323, 332, 353 and 506 of the Indian Penal Code.

(3) On 14.07.2022, the information was received in the office of MSEDCL, Digras on phone that on old Laigawhan Pandhan Road, a person resident of Mandawa died due to electrocution. Therefore, the officials of the MSEDCL rushed to spot. The officials carried out inspection. At that time, the villagers gathered there, including the six accused persons in this crime. The villagers were angry because of death of their co-villager. The villagers blamed the officials of

MSEDCL for the death of co-villager. It is stated that therefore, the heated arguments took place and the officials of the MSEDCL were assaulted by the accused persons. The report of this incident was lodged on 15.07.2022. On the basis of this report, the crime, as above, came to be registered.

(4) It is stated that the first anticipatory bail application, made by these two applicants, with the remaining four accused, was rejected by this Court on the ground that the investigation was at very nascent stage. It is stated that the remaining four accused were arrested and released on bail by the learned Sessions Judge. It is stated that the weapons, allegedly used in the crime, have been recovered. The investigation is almost complete. The custodial interrogation of the applicants is not necessary. It is their case that in the changed circumstances, they may be granted anticipatory bail.

(5) The investigating officer has filed reply and opposed the application. However, it is not disputed that the four accused arrested in the crime have been released on bail. There is no denial of the fact that the sticks, allegedly used in the assault, were recovered after arrest of the remaining four accused.

(6) It is true that the first application made by the applicants was rejected. The question is whether this

anticipatory bail application can be entertained and granted in the backdrop of the change in the circumstances placed on record. In my view, the act alleged to have been committed by the applicants, with the remaining accused, cannot be equated with the usual crime of intimidation or use of force against the public servant. It is seen on perusal of the record that the co-villager died due to electrocution. According to the accused and the villagers the negligence on the part of the officials of MSEDCL was sole cause of the alleged incident and the death of the co-villager. It is seen that the officials were surrounded and asked to admit their guilt. In this process, the unfortunate incident of assault on the public servants occurred. In my view, this is one aspect which needs to be borne in mind while deciding this bail application.

(7) It is seen that there is substance in the contention that there is change in the circumstances and on account of change in the circumstances this application is maintainable and may be granted. It is to be noted that the four accused in this crime were arrested. The weapons, allegedly used in the crime, have been recovered by the Investigating Officer. The statements of the witnesses have been recorded. The majority of the witnesses are the officials of MSEDCL. The investigation is on the verge of completion. Therefore, it is apparent on the face of the record that for the purpose of investigation or for the recovery of the weapons of the

offence, the arrest of the applicants is not necessary. It is true that the applicants can surrender before the Court and they can be granted bail immediately considering the nature of the offence alleged to have been committed by them. However, in my opinion, the applicants cannot be made to face that ordeal. The investigating officer is bound to arrest the applicants before filing charge-sheet. Therefore, their apprehension is well founded. In the backdrop of the change in the circumstances, the application is maintainable. Similarly, considering the advance stage of investigation and the recovery of the weapons, the custodial interrogation of the applicants may not be necessary. In the facts and circumstances, the application deserves to be allowed.

(8) The application is allowed.

(9) The ad-interim protection granted by this Court vide order dated 04.10.2022 stands confirmed.

(10) The application stands **disposed of**. All pending criminal applications, if any, stands disposed of.

(G. A. SANAP, J.)

Namrata