

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

CRIMINAL APPLICATION (ABA) NO. 708 OF 2022

Moreshwar S/o. Sheshrao Dakhole .Vs. 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 C. B. Barve, Advocate for the applicant
Mr S. M. Ghodeswar, APP for the State

CORAM : G.A. SANAP, J.
DATE : OCTOBER 13, 2022.

The applicant is the accused No.1 in Crime bearing No. 350 of 2022, registered at Police Station Jalakheda, Distt. Nagpur, for the offences punishable under Sections 109, 307, 498-A R/w. Section 34 of the Indian Penal Code. The above crime has been registered against the four persons. The accused No.1 is one of them. The remaining three accused persons have been granted anticipatory bail by the learned Additional Sessions Judge, Nagpur vide order dated 21.09.2022. The learned Additional Sessions Judge was not pleased to grant the same relief to the applicant/accused No.1.

2. It is stated that there is inordinate delay in lodging the report. The report has been lodged in connivance with the relatives of the informant. There was no ill-treatment of any nature to the informant. The incident, as narrated in the First Information Report, did not occur. The applicant/accused No.1 immediately after noticing consumption of

poison by the informant took her to the hospital. She was treated in the hospital. Her statement was recorded by the Police in the hospital. It is stated that the facts reported in the first statement made to the police indicate that no role was attributed to the applicant/accused No.1. The custodial interrogation of the applicant is not necessary. The applicant is ready to co-operate the police in the investigation. He is ready to abide by the conditions that may be imposed by the Court.

3. The learned APP for the State has opposed the application. It is contended that the investigation is at the preliminary stage. The crime committed is serious. The custody of the applicant is necessary for fruitful custodial interrogation. The specific role has been attributed to the applicant by the informant. The informant was subjected to cruelty and ill-treatment. The applicant with the assistance of his mother administered poison to the informant by using force.

4. I have heard the learned Advocate for the applicant and the learned APP for the State. Perused the record and proceedings and particularly the case diary.

5. The applicant is the husband of the informant. The applicant had admitted the informant in the hospital on 09.09.2022. She was treated in the hospital. She was discharged from the hospital on 12.09.2022. The applicant all throughout accompanied the informant in the hospital. It

is seen from the perusal of the record that the relatives of the informant had also come to the hospital on receipt of information of the admission of the informant in the hospital. Perusal of the case diary would show that on receipt of the information by the police, the police on duty at Mayo Hospital, Nagpur went to the concerned ward and made a request to the Medical Officer to certify the fitness of the informant for making the statement and recorded the statement of the informant. The statement is part of the case diary. In the said statement, the informant has stated that on account of domestic cause the quarrel took place between informant on one hand and her mother-in-law and sister-in-law on other hand. She has stated that her mother-in-law and sister-in-law administered rat poison to her. In this statement, which was made for the first time about the incident, the applicant has not been named, being the person responsible for administering the poison. The applicant/accused No.1 has been named for the first time in the First Information Report lodged on 16.09.2022 by the informant. The learned Judge on perusal of the relevant record was inclined to grant anticipatory bail to the mother-in-law, sister-in-law and one distant relative of the applicant/accused No.1. But, the learned Judge was not inclined to extend same benefit to this applicant.

6. Considering the role attributed to him in the First Information Report, I am conscious that while deciding the

anticipatory bail application the merits of the matter cannot be gone into. However, the Court has to peruse the available record and form a *prima facie* opinion. As stated above, the statement made by the informant first in point of time did not implicate the applicant in the incident of administering the poison to informant. The applicant has been implicated for the first time on 16.09.2022. Perusal of the statement of the informant which is first in point of time would indicate that a specific role was attributed only to mother-in-law and sister-in-law. They have been granted pre-arrest bail. On *prima facie* analysis of this material, I am of the view that the case of the applicant would stand on the better footing.

7. It has been recorded in the order that the investigation is on the verge of the completion. In the fact and circumstances and particularly bearing in mind the first statement made by the informant, it would be appropriate to extend the benefit to the applicant which has been extended to the remaining accused by the learned trial Judge. The apprehension placed on record can be taken care of by imposing the appropriate conditions. It is further pertinent to note that the progress of the investigation would not get thwarted because of grant of anticipatory bail to the applicant. As per the settled legal position, it would be open for the Investigating officer to apply for the temporary custody of the applicant for the purpose of recovery and discovery under Section 27 of the Indian Evidence Act. In my view, therefore

the appropriate conditions would serve the purpose. Hence, the following order:

- i] The application is allowed.
- ii] In the event of arrest of the applicant-Moreshwar S/o. Sheshrao Dakhole, in connection with Crime No.350 of 2022, registered with Police Station Jalalkheda, District : Nagpur for the offences punishable under Sections 109, 307, 498-A R/w. Section 34 of the Indian Penal Code, the applicant shall be released on bail on furnishing P.R. Bond in the sum of Rupees Twenty Thousand with one solvent surety in the like amount.
- ii] The applicant shall not in any way tamper with the prosecution evidence.
- iii] The applicant shall not pressurize or threaten the prosecution witnesses.
- iv] The applicant shall attend the concerned police station on every Monday and Saturday between 7:00 p.m. and 9:00 p.m. till filing of the charge-sheet.
- v] The applicant shall co-operate the investigation officer.

8. The application stands disposed of accordingly.

(G. A. SANAP, J.)

Namrata