

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Anticipatory Bail Application (ABA) No. 792 of 2022

Nitin Bhimrao Chavan

Versus

State of Maharashtra, through its Police Station Officer, Police Station
Kotwali, Akola

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.P.Dharmadhikari, Advocate assist by
Shri A.S.Shukla, Advocate and Shri A.D.Shriwas,
Advocate for the applicant.
Shri S.D.Sirpurkar, APP for the State / Non-applicant
Shri A.D.Bhate, Advocate for assist to prosecution.

CORAM : ANIL S. KILOR, J.

DATED : 12th DECEMBER, 2022.

The applicant is seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure in Crime No. 275 of 2022 registered with Police Station City Kotwali, Akola for the offence punishable under Sections 377, 341, 354, 343, 348, 357, 358, 362, 368, 294, 324, 326, 330, 331, 447, 452, 352, 205, 504, 506, 509 read with Section 34 and 120-B of Indian Penal Code.

2. It is the case of prosecution that the complainant filed the proceedings under Section 156(3) of the Criminal Procedure Code vide MCC No. 1254 of

2022, wherein, the Judicial Magistrate First Class, Court No.7, Akola directed the non-applicant/Police Station to register the offence and investigate the matter.

3. Accordingly, the offence was registered vide Crime No. 275/2022 and investigation was taken up. It is stated that the present applicant/accused no.1 is working with the Local Crime Branch, Akola on the post of Sub-Inspector and rest of the accused persons also belong to the Police Department besides two-three unknown accused persons.

4. It is the case of prosecution that the complainant was alleged to have purchased the gold involved in the theft of gold and the complainant was apprehended in the said offence of theft and interrogated by the Police and while interrogating the complainant he was subjected to extreme cruelty and third degree torture by the Police. It is further alleged that while in custody, the complainant was also subjected to unnatural sexual assault by another suspects in the offence involving two persons. The complainant was under Police custody for four days and was later on released on bail on 17.01.2022. Thereupon, the complainant lodged the report with the Superintendent of Police, who initiated an enquiry and since there was no progress in the enquiry, the

complainant lodged the proceedings before the Judicial Magistrate First Class under Section 156(3) of the Criminal Procedure Code and the directions were issued therein by the learned Judicial Magistrate First Class to investigate the matter including the direction to obtain C.C.T.V footage at the relevant places like residence of the complainant and premises of Local Crime Branch, Akola.

5. Heard Shri Dharmadhikari, learned Senior Advocate for the applicant and Shri Sirpurkar, learned Additional Public Prosecutor for the non-applicant/ State.

6. Shri Dharmadhikari, learned Senior Advocate for the applicant submits that the applicant has been falsely implicated in the alleged offence out of grudge against the applicant being a Police Officer who arrested the informant in Crime No. 3 of 2022.

7. It is submitted that after arrest of the informant in the said offence he was produced before the Magistrate, however, he never complaint about any torture by the applicant, in the police custody.

8. It is pointed out that the brother of the informant was an advocate he was all the time with the informant when he was produced before the Magistrate at the time of remand. Despite the said fact no

complaint was made and after the informant was released on bail, he lodged the complaints making all sorts of wild and baseless allegations against the applicant.

9. It is pointed out that the allegations attracting Section 377 of Indian Penal Code were found to be false as during the enquiry by the department, the co-accused who were arrested with the informant, denied any such incident.

10. On the other hand, Shri Sirpurkar, learned Additional Public Prosecutor opposed the application and submits that there is sufficient evidence collected by the Investigating Officer during the investigation which connects the applicant with the alleged offence. He submits that the offence is serious. Accordingly, he prays for rejection of present application.

11. He further submits that there is a CCTV footage which supports the case of the prosecution. It is submitted that though the informant was arrested in the night of 9th January, 2022, his arrest was shown on 10th January, 2022 and thereby the record was manipulated and fabricated.

12. Shri Bhate, learned counsel for the informant reiterates the submission of the learned Additional Public Prosecutor and further points out that

because the informant was frightened as he was threatened to implicate in false cases, he did not disclose the fact of torture to Magistrate. He submits that the medical documents were also manipulated by the applicant. Accordingly, he prays for rejection of the present application.

13. I have perused the application, reply of the State and documents filed alongwith objection of the informant to the application for grant of anticipatory bail.

14. The applicant is currently serving as Assistant Sub-inspector at Washim. However, at the relevant time he was working at Akola.

15. The informant was arrested on 10th January, 2022 in Crime No 3/2022 on the allegation that he indulged in purchasing stolen gold articles being goldsmith from the habitual offender namely Rajesh Raut, Ashish Karale and Yogesh Savale. The stolen gold was seized from the informant.

16. On 15th January, 2022, the informant was released on bail in the said crime. However, whenever, the informant was produced in the Court of the Magistrate, he never made complaint of any torture by the applicant or other police staff.

17. The report submitted by Sub-Divisional Police Officer Subhas Dudhgaonkar on a complaint made by the informant against the applicant about torture and illegality committed by the applicant, the inquiry officer has observed that during the remand on 11th January, 2022 and 14th January, 2022, no complaint was made by the informant about any torture or sexual assault. It is also observed in the report that brother of the informant Advocate Ritesh Verma was present in the Court on both occasions and not only that his advocate brother has met him in the custody. Nonetheless, but at no point of time the brother of the informant has also made any complaint.

18. As far as the allegations that the applicant asked the co-accused in Crime No. 3/2022 to put their private parts in the mouth of the informant, both the co-accused in their statement, denied any such incident. It is imperative to note that when the statements were recorded, they were not in police custody but they were on bail.

19. The said two co-accused in their statement under Section 164 of the Code of Criminal Procedure, also denied the incident attracting Section 377 of Indian Penal Code.

20. Thus, it create doubt about the credibility of the informant and his story.

21. There is one more reason to say this as CCTV footage collected by the prosecution shows that while the informant was brought to the police station he was not able to walk properly. It has also come on record that some police staff poured some liquid on the legs of the informant but it was not the hot water because after pouring of the said liquid there was no reaction was found which otherwise in normal case would have been.

22. Moreover, medical report dated 10th January, 2022 shows that the burn injuries found on the leg of the applicant were four days old. Hence, even if it is considered that the informant was arrested on 9th January, 2022 and not on 10th January, 2022, the burn injuries are old one.

23. Similarly, another medical report dated 14th January, 2022, states that injuries are ten days old. Therefore, there is no *prima facie* evidence to show that the burn injuries as alleged by the informant were caused because of pouring of hot water by the applicant or co-accused in the present crime.

24. In the above referred backdrop, even if there is a *prima facie* material that the informant was arrested

by the applicant on 9th January, 2022 and his arrest was shown on 10th January, 2022, the custodial interrogation of the applicant is not necessary, as the police have already seized the record in this regard.

25. Thus, in the above referred circumstances and considering the fact that the applicant is in Government service and there is no possibility that he will not be available for trial and further as he has already been transferred from Akola to Washim, there is no possibility that he will pressurise or tamper with the prosecution evidence, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that in the event of arrest of the applicant in Crime No. 275 of 2022 registered with Police Station City Kotwali, Akola for the offence punishable under Sections 377, 341, 354, 343, 348, 357, 358, 362, 368, 294, 324, 326, 330, 331, 447, 452, 352, 205, 504, 506, 509 read with Section 34 and 120-B of Indian Penal Code, he shall be released on bail on furnishing P.R.Bond of Rs.25,000/- with one solvent surety in the like amount;
- ii. The applicant shall attend the concerned Police Station as and when his presence is required.

[ANIL S. KILOR, J.]

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by
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