

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 CRIMINAL APPLICATION NO.1007 OF 2023

IN ABA/331/2023

SUSHIL MURLIDHAR BIYANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Party in Person.
APP for Respondents-State : Mr. S. B. Narwade.
Advocate for Respondent No.2 : Mr. V. D. Sapkal (Senior
Counsel) i/b Mr. S. R. Sapkal.

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CORAM : S. G. MEHARE, J.
DATE : 27.03.2023

PER COURT :-

1. Advocate Sushil Murlidhar Biyani has preferred the Application, seeking leave to address the Court opposing the anticipatory bail application of respondent No.2.

2. The Crime bearing No.49 of 2023 has been registered on his first information report. He has alleged against the accused that they have played fraud, forged the documents, raised the huge loan from various banks and cheated common people. He claimed that the first informant has a right to address the Court. Therefore, the Court has gone through the First Information Report and found no whisper alleging that the applicant has been victimized by the accused. Thus, the Court

questioned him about his locus. He has vehemently argued that he falls under the definition of the term "victim" as defined in Section 2(wa) of the Code of Criminal Procedure. He also referred to Sections 193 and 360 of Cr.P.C.

3. To bolster his argument, he relied on the case of ***Pradeep Kumar Sethy Vs. State of Odisha and another***, Writ Petition (CRL.) No.53 of 2020 (In the matter of an application under Articles 226 and 227 of the Constitution of India), decided on 23.12.2020. ***The State of Chhattisgarh and another Vs. Aman Kumar Singh and others***, etc. etc., Criminal Appeal Nos.646-648 of 2023 (@SLP (CRL.) Nos.1703-1705 of 2022, decided on 01.03.2023 with the connected matter. He also relied on the case of ***Dashrath s/o Jivanlal Choudhari Vs. The State of Maharashtra*** of this Court in Anticipatory Bail Application No.1005 of 2022, dated 26.08.2022, Devidas Trimbak Dhepale Vs. State of Maharashtra and another in Anticipatory Bail Application No.1226 of 2022 with other applications dated 04.10.2022 and the Landmark Judgment of the Hon'ble Supreme Court in the case of ***Jagjeet Singh and others Vs. Ashish Mishra @ Monu and another***, 2022 LiveLaw (SC) 376.

4. In view of the matter, the Court believes that the case of Jagjeet Singh is most relevant to decide the applicant's locus. In the said judgment, the Hon'ble Supreme Court, in paragraph No.24, has observed thus :

"24. A 'victim' within the meaning of Cr.PC. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of Crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony."

5. Each citizen of India is bound to inform the police of any offence that he knew or witnessed. The Indian Criminal Jurisprudence even respect the stranger to receive his information if the cognizable Crime has been committed, and any such person may put the law into motion. Every citizen is supposed to support the prosecution to find out the truth and convict or punish a wrongdoer. The present applicant in the present case has lodged the report disclosing specific incidents that amount to Crime. On his complaint, the present FIR was registered. However, the applicant in person has argued that

this report is the outcome of some earlier incidents, and the Crime was also registered in that case. Learned APP assisted the Court, informing that an earlier Crime had been registered against the present applicant and the co-accused.

6. Learned senior counsel for respondent No.2/accused pointed out that the present accused and her husband had lodged the report against advocate Sushil Murlidhar Biyani/applicant, alleging that he does illegal money lending business. Under the garb of the hand loan, he got two immovable properties transferred in his name and another in the name of the person working with him. That was the grievance against the applicant and co-accused. He has referred to the report lodged against the present applicant.

7. The term "victim" and first informant/complainant are distinct as the Hon'ble Supreme Court viewed in *Jagjeet Sing's* case. It has been pronounced in the above case that the victim is entitled to address the Court. They did not wait till the trial opened. Such a person has a distinct right to be heard at every step post the occurrence of an offence. Considering the distinction between the victim and complainant/informant, the Court is of the view that Mr. advocate Sushil Murlidhar Biyani/applicant is merely a first informant. His role was over as soon

as he lodged the report. At the most, the police may record his statement, and collect the documents, if any, found relevant to the Crime. Reading the definition of the term "victim" and the pronouncement of the Hon'ble Supreme Court in the case of *Jagjeet Singh* (supra), the Court is of the view that the applicant is the person who has merely put the law into motion and not the victim who has right to address the Court. For the above reasons, this Court is of the view that Mr. advocate Sushil Murlidhar Biyani/applicant has no locus to address the Court being not a victim.

8. Hence, Criminal Application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-