

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.3072 OF 2023
IN
CRIMINAL APPEAL NO.53 OF 2023

Ashok Ramnath Nage,
Age 43 yrs., Occ. Agri./Business,
R/o Bokud Jalgaon, Tq. Paithan,
Dist. Aurangabad.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Bidkin,
Dist. Aurangabad.
- 2 Bhausahab Baburao Lokhande,
Age 42 yrs., Occ. Agri./Business,
R/o Bokud Jalgaon, Tq. Paithan,
Dist. Aurangabad.

... Respondents

...

Mr. N.N. Desale, Advocate for applicant
Mrs. V.S. Choudhari, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.

DATE : 05th SEPTEMBER, 2023

ORDER : **(PER : SMT. VIBHA KANKANWADI, J.)**

1 Present application has been filed for relaxing condition No.IV imposed by this Court by order dated 17.03.2023 in Criminal Appeal No.53 of 2023 by which the applicant was granted anticipatory bail.

2 Heard learned Advocate Mr. N.N. Desale for the applicant and learned APP Mrs. V.S. Choudhari for respondent No.1.

3 It has been vehemently submitted that the applicant granted pre arrest bail in connection with Crime No.1/2023 registered with Bidkin Police Station, for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 504, 506 read with Section 149 of the Indian Penal Code, under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 4 punishable under Section 25 of the Indian Arms Act. While granting anticipatory bail following condition was imposed.

“(IV) The appellant shall not reside and visit the jurisdiction of village Bokud Jalgaon, Taluka-Paithan, District-Aurangabad till conclusion of the trial. Appellant should reside elsewhere, and he should give complete address of his proposed residence with his Mobile Number to the Investigating Officer.”

The applicant is permanent resident of village Bokud Jalgaon, Tq. Paithan, Dist. Aurangabad and owner of lands Gat No.78 admeasuring 00 H 44 R and Gat No.218 admeasuring 00 H 20 R situated at village Bokud Jalgaon, Tq. Paithan, Dist. Aurangabad. The land Gat No.221 admeasuring 01 H 35 R situated at same village Bokud Jalgaon is owned and possessed by his wife. Now, in view of the order passed by this Court on 17.03.2023 the applicant is not residing in Bokud Jalgaon, but residing at Chitegaon. He has not violated any conditions. Now, the agricultural operations are required to be undertaken. Further, he is the owner of Hotel Akash Bar and Restaurant situated in the same agricultural land. The licence has been issued in his favour and it has been renewed from time to time. Due to the order given by this Court the appellant is unable to do his business, which is affecting him economically. He has not contacted any of the witnesses. He will abide by the terms of the bail, however, condition No.IV being harsh it be relaxed.

4 Learned APP has strongly opposed the application. He submitted that taking into consideration the entire facts and events stated in the order itself and also the threats those were given on social media, causing fear in the mind of informant and witnesses as well as witness Bhausahab Tarmale receiving severe injuries, the said condition came to be imposed and, therefore, there is no necessity to relax the said condition.

5 Perusal of order dated 17.03.2023 would make it clear as to what were the facts. Of course, this Court has considered that the parameters those were utilized to reject the bail application by the learned Special Judge, were wrong; yet, the role played by the present applicant has been stated by witness Bhausahab Tarmale. The applicant had supplied the weapons to his sons Aniket and Akash and the weapon was gupti. The photographs were also produced showing that Bhausahab Tarmale has received severe bleeding injury. Under the said circumstance, the fear in the mind of the informant and the witnesses was taken care of while granting the pre arrest bail to the applicant by imposing conditions, no case is made out to relax the said condition.

6 Though in the body of the application, the applicant has stated that now he is residing at Chitegaon; yet, in the title of the application as well as verification he has given his address as - "R/o Bokud Jalgaon, Tq. Paithan, Dist. Aurangabad". His present detail address has not been supplied by the applicant. When this fact was asked to learned Advocate for the applicant, he submitted that it is the mistake, but in the body of the application it has been stated by the applicant that he is residing at Chitegaon.

7 The condition for 'not to enter the village' was imposed with some reason, thereby an assurance is given to the informant and witnesses that they can move in the village freely and the burden of fear they were carrying is thereby lessened. It takes care of the safety of the informant, witnesses as well as even that of the accused sometimes as the attacking retaliation is ruled out. Accused intending to carry out the agricultural operations or want to run the hotel cannot be a ground to relax the said condition, because importance will have to be given to the protection of life and liberty of the persons. Hence, the application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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