

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1572 OF 2022

1. Bhausaheb Pandharinath Navgire
2. Balasaheb Bhausaheb Navgire Applicants

Versus

The State of Maharashtra
and others Respondents

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Mr. Chandrakant K. Shinde, Advocate for the Applicants
Mr. A.A. Jagatkar, APP for Respondents – State
Mr. K.N. Shermale, Advocate for the Informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th FEBRUARY, 2023

ORDER :

1. The applicants apprehend their arrest in connection with Crime No.0314 of 2022 registered with Sonai Police Station, District Ahmednagar for offences punishable under sections 307, 143, 147, 148, 149, 323, 504, 506 read with 34 of the Indian Penal Code.

2. FIR is lodged by Sampat Ashok Mate on 12/09/2022, which is registered on direction issued by the learned Judicial Magistrate, First Class, Newasa under section 156 (3) of the Code of Criminal Procedure. On the basis of directions issued by the learned Judicial Magistrate, First Class, the FIR in

question is registered, wherein it is alleged that there is land dispute going on between the informant and the accused since 2019. On 02/12/2022, at about 1.00 p.m., 5 accused persons namely Bhausahab Pandharinath Navgire, Rajendra Bhausahab Navgire, Chandrakala Bhausahab Navgire, Balasaheb Bhausahab Navgire and Dipali Balasaheb Navgire came in the agricultural field of informant bearing Gut No.220/1/E in blue Tractor of *Sonalika* Company and Maroti Alto Car. Balasaheb Navgire and Dipali Navgire were in the Tractor and others were in the Maroti Alto Car. Balasaheb Navgire took out poisonous medicine from his pocket. Bhausahab caught hold the jaw of the informant, and Balasaheb Navgire poured the said poisonous medicine in his mouth. The informant was admitted in the hospital, and after 3 days treatment, he regained consciousness. Then he went to the Police Station to lodge complaint, however, the same was not accepted as the applicant No.2 Balasaheb is President of District Journalists Association. He then forwarded the complaint to Superintendent of Police, however, it was of no use. The informant forwarded his complaint on 11/04/2022 through R.P.A.D. Thereafter, he approached the learned Judicial Magistrate, First, Class, Newasa, and the present FIR is registered.

3. Heard learned advocate for the applicants, learned Additional Public Prosecutor for respondents – State and learned advocate for the informant. Perused the investigation papers.

4. Applicants' side has filed non-cognizable cases against the informant. Applicant No.2 has filed FIR at Crime No.62 of 2022 against informant and 6 others including his family members and relatives, which is registered with Sonai Police Station for offences punishable under sections 143, 147, 447, 323, 504, 506 and 427 of the Indian Penal Code. At the instance of applicant No. 2 Balasaheb Navgire, FIR at Crime No.119 of 2022 is registered with the same Police Station for offences punishable under section 395, 379, 504 and 506 of the Indian Penal Code. It is, therefore, clear that since long civil and criminal proceedings are pending between both the parties.

5. The incident has allegedly taken place on 02/02/2022, and from the discharge card of the informant it is revealed that the informant is discharged from the hospital on 04/02/2022. Thereafter, first complaint sought to be lodged by

the informant is on 22/03/2022. There is no explanation of this delay. The complaint was forwarded to the Deputy Superintendent of Police, Ahmednagar by the informant on 13/04/2022. Application for seeking direction under section 156(3) is filed by the informant on 15/06/2022.

6. Considering these aspects, *prima facie*, there appears substance in the contention of applicants that they are falsely implicated in a concocted case. At the time of admission of the informant in the hospital, history is given by Ganesh, brother of informant that informant has consumed poison in his field. Statement of Ganesh is recorded on 13/09/2022, wherein he has stated that on 02/02/2022 itself, informant disclosed to him that the accused persons forcibly administered poison to him. However, he did not disclose this fact to the medical officer while admitting the informant. Even in the MLC forwarded to the police station, self consumption of poison is mentioned.

7. The applicants have relied upon stay granted in their favour in respect of land Gat No. 220/1/E, which they claimed to have purchased from the mother of informant by registered sale deed in the year 2009.

8. The learned advocate for the informant has vehemently opposed the application, contending that the dispute is in respect of different lands, and dispute for correction of *Gat* number is pending before the competent authority. He, therefore, submits that because of the pressure of the applicant Balasaheb Navgire, the police did not accept his complaint. Therefore, he was constrained to file a private complaint.

9. As noted supra, in spite of discharge on 04/02/2022, the informant for the first time sought to lodge report on 22/03/2022, and thereafter, he has forwarded the complaint to Deputy Superintendent of Police on 13/04/2022. In view of this unexplained delay, the aforesaid submission cannot be accepted.

10. Learned advocate for the informant has relied on *Adri Dharan Das Vs. State of West Bengal, (2005) 4 SCC 303* and *Nasiruddin Vs. State (NCT OF DELHI) and Others, (2014) 13 SCC 579*, and order passed by the Apex Court in case of *Sumitha Pradeep Vs. Arun Kumar C.K. and another, SCC online SC 1529*.

11. In ***Adri Dharan Das*** (supra), it is observed thus:

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. The Court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the

Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.

20. *We make it clear that while upholding the rejection of the prayer in terms of Section 438 of the Code, we are not expressing any opinion on the merits of the case. When the bail application is moved in terms of Section 439 of the Code before the concerned Court the same shall be considered in its proper perspective in accordance with law."*

12. In **Nasiruddin** (supra), it is observed thus:

"12. We are informed that none of the accused persons had disclosed the source from which the weapon and bullets were procured and that the investigating officer has pointed out that the offence under Section 201 would be charged if the weapon is not traced/recovered. Above facts would clearly indicate that this is not a fit case for granting anticipatory bail, especially when the investigation is not over and the weapon used in the offence is yet to be traced. The medical report refers to the gunshot injury on the body of the appellant. FIR was also found promptly registered. The question as to whether the case will fall under Section 326 IPC could be determined only after the investigation is completed. The learned

Additional Sessions Judge, while granting anticipatory bail, opined that after having considered the medical report, the ingredients of Section 326 of IPC have not been satisfied. We are of the view that it was too early for the learned Additional Sessions Judge to express any opinion merely looking at the medical report. Medical report positively indicates of gunshot injury, may be simple, and it is due to that reason that the police has added the offences under Section 307 IPC as well as Section 25 of the Arms Act.

13. Above being the factual situation, in our view, the learned Additional Sessions Judge has committed an error in granting anticipatory bail to Respondents 2-4, which was affirmed by the High Court. Consequently, the appeal is allowed and the order passed by the Additional Sessions Judge and the affirmation order passed by the High Court are set aside. However, Respondents 2-4, is so advised, may apply for regular bail before the trial court and the trial court may consider the same in accordance with law."

13. In ***Smitha Pradeep*** (supra), learned advocate for the informant relied on following observations:

"In many anticipatory bail matters, we have noticed one common argument being canvassed that no

custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. here may be many cases in which the custodial

interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail."

14. In the case in hand, taking into consideration the previous civil disputes, and criminal cases lodged by both parties against each other, in my view, aforesaid observations would not help the informant.

15. Taking into consideration the civil disputes and various complaints lodged by both parties against each other. *Prima facie*, false implication of the applicants, at this stage, cannot be ruled out.

16. Considering inordinate delay in lodging FIR, the applicants need not be directed to undergo custodial interrogation.

17. The applicants were granted interim protection and they have co-operated in the investigation. Pre-trial custodial interrogation of the applicants, in the present case, is not warranted.

18. The application, is therefore, allowed. In the event of arrest of applicants in connection with Crime No.0314 of 2022 registered with Sonai Police Station, District Ahmednagar for offences punishable under sections 307, 143, 147, 148, 149, 323, 504, 506 read with 34 of the Indian Penal Code, the applicants shall be released on bail on executing Personal Bond of Rs.15,000/- each with one surety in the like amount.

19. Till filing of the charge sheet, the applicants shall attend the concerned police station as and when called by the investigating officer and co-operate in the investigation. The applicants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE