

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

CRIMINAL APPLICATION NO. 246 OF 2023

(Mohd. Azhar Yusuf Deshmukh ..Vs.. The State of Maharashtra)

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

Court's or Judge's Order

Shri S.V.Sirpurkar, Advocate for the applicant.
Shri A.M. Kadukar, A.P.P. for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : JUNE 06, 2023.
PRONOUNCED ON : JUNE 15, 2023.

Heard.

2. By this application, the applicant is seeking anticipatory bail in the event of his arrest in connection with Crime No.121 of 2023 registered at Jalgaon (Jamod) Police Station, District Buldhana for the offence punishable under Sections 395, 397, 341 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, 1959.

3. The applicant is apprehending arrest at the hands of the Police as crime is registered against him on the basis of report lodged by one Ganesh Gajanan Kamble. It is alleged that on 08.03.2023 informant Ganesh Kamble along with his friends Mangesh Borakhade and Ram Devkate were proceeding in Ertiga Car bearing No.MH 28 AZ 4127 via Burhanpur to Jalgaon Jamod. At the relevant time, present applicant along with other co-accused in furtherance of their common intention obstructed the informant by creating the hurdle by keeping the vehicle bearing No.MH-28-AB-0645 in front of the Car of the informant at Rasalpur Phata. Co-accused Javed Abdul Rafaq Shaikh was

holding iron pipe in his hand, broken the glass of the vehicle and dragged the informant and other witnesses outside the vehicle and assaulted them. All the accused snatched the cash amount of Rs.15,000/- from the pant pocket of the informant and threatened them. On the basis of said report, the Police have registered the crime against the present applicant and the other co-accused.

4. As per the contention of the present applicant, his name is not appearing in the FIR and no role has been attributed to him. He has been falsely implicated in the alleged offence. There has been unexplained delay in lodging the FIR, which would show that the applicant and other co-accused has been falsely implicated in the present crime. The distance between the place of incident and the Police Station is only 2 kilometers and no explanation is put-forth by the informant about the delayed FIR. Present applicant is the President of the National Congress Party of Jalgaon Jamod City. He was also President of City Jalgaon Jamod of Bhartiya Bahujan Mahasangha in the year 2013. He was also President of Jalgaon Jamod Vidhan Sabha Matdar Sangha of Minority Cell in the year 2018. Thus, the applicant is a social worker and having good reputation in the society. He is also Vice-President of Dr. Iqbal Social Welfare Society Jalgaon Jamod and Secretary of Muslim Social Multipurpose Society, Jalgaon Jamod. He is a Businessman and also possess the license under the Maharashtra Shop & Establishment Act. Thus, the applicant is not only the social worker but also a businessman having a reputation in the society.

5. On 08.03.2023, some National Congress Party Political members had approached to the Jalgaon Jamod Police Station and were insisting the concerned Police Station to lodge the report under the provisions of the Food Safety and Standards Act, 2006 as vehicle bearing No.MH-28 H 7450 at Rasalpur Fata containing Gutka, and Pan Masala and the vehicle was brought in the Police Station. The applicant had received the phone call of Member of National Congress Party. He reached to the Police Station and requested the Police to register the crime against the owner and driver of the said vehicle. On insistence of the present applicant to register the crime, the Police have shown their readiness to register the crime. Thereafter, the owner of the vehicle namely Karan Tribhuwan and its driver Ganesh Kamble i.e. present informant have lodged false report against the 7 to 8 persons alleging that they have committed robbery.

6. The Police Authority have also registered the offence against the unknown persons under the provisions of the Food Safety and Standard Act, 1959 as well as under Sections 188, 273, 373, 328 of the Indian Penal Code. Thus, the applicant is falsely implicated in the alleged offence only because he has insisted to register the crime against the present informant. There is no material against the present applicant to connect him with the alleged offence, and therefore, he preferred the present application for grant of bail in the event of arrest.

7. It is further contention of the applicant, that his physical custody is not at all required as nothing is to be recovered from him. He has a root in the society and if

he is arrested, his reputation would affect. There is no reason to believe that he would abscond after releasing him on bail as he is having permanent abodes in Jalgaon Jamod. He will abide by all conditions imposed by this Court and hence, be released on bail in the event of arrest.

8. The State strongly opposed the said application on the ground that the FIR is registered against the accused nos. 4 and 6. During the investigation, the involvement of the other co-accused revealed. Total 10 accused are involved therein out of which 6 accused accused were arrested and 4 are still absconding including the present applicant. It is further stated that during the investigation, the Investigating Agency has recovered an amount of Rs.15,000/- from the accused No.5 Javed Sheikh and the incriminating article, weapon and pipe was also recovered. The weapon sword is recovered at the instance of accused no. 4 Irfan Shetty. The vehicle Tata Ace bearing No.MH-28-AB-0645 used in the crime by the absconding accused no.8 Hakimuddin Sayyad was also seized by the Investigation Agency. During the investigation, TI parade was held and the co-accused nos.4,5,6 & 7 were arrested. The supplementary statement of the witnesses shows the involvement of the present applicant/accused in the present case. In fact, present applicant is the main accused having criminal antecedents around three offences were registered against him at Jalgaon Jamod Police Station. During investigation, the Investigating Officer has collected CDR/SDR of the cell phones of the present applicant,

which would reveal that present applicant was in contact with the other co-accused at the relevant time. The tower location collected by the Investigation Officer also shows that applicant was present at the spot of the incident at the time of alleged incident. The *prima facie* material collected during the investigation sufficiently shows the involvement of the present applicant in the alleged offence, hence his custodial interrogation is required and thus, the application is deserves to be rejected.

9. Heard the learned Counsel Shri S.V. Sirpurkar for the applicant. He reiterated the contention raised in the application and also submit that the applicant is the member of the National Congress Party and having root in the society. He is having movable and immovable property in the village Jalgaon Jamod. The applicant is also the social worker and rendering the social services towards the public at large. He is implicated only because he has insisted the Police authorities to register the crime against the informant, who was found along with Gutka and Pan Masala carrying in vehicle illegally. The Police Authority have registered the crime against the informant vide crime No.120/2023 under Sections 188, 273, 373, 328 of the Indian Penal Code and under Sections 26(2)(i), 26(2)(iv), 27(3)(d), 27(3)(e) and Section 59 of the Food Safety and Standard Act, 1959. Thus, it reveals that as the applicant was insisted for the arrest of the informant, the applicant is falsely implicated in the alleged offence. The investigation is practically completed. Custodial interrogation is not required. Nothing is to be recovered from him and hence, he be

released on anticipatory bail in the event of his arrest.

10. Learned A.P.P. shri A.M. Kadukar for the State submitted that the investigation papers which are produced on the record, sufficiently shows the involvement of the present applicant in the alleged offence. He further submitted that not only the statement of the witnesses shows the involvement of the present applicant in the alleged offence but during investigation the Investigating Officer has collected CDR/SDR of the cell phones of the accused persons, which would reveal that present applicant was in contact with the other co-accused at the relevant time. The tower location collected by the Investigation Officer also shows that applicant was present at the spot of the incident at the time of alleged incident. Thus, *prima facie* material is on record to show his involvement and hence, the bail application is deserves to be rejected.

11. Heard learned Counsel appearing for both the sides. Perused the investigation papers. The crime is registered on the basis report lodged by Ganesh Kamble. As per the allegation of informant, when he was returning from Ujjain (MP) in his Car bearing No.MH28 AZ 4127, 4 to 5 persons obstructed his car by keeping another four wheeler bearing No. MH28 AB 0645 in front of the Car at Rasalpur Phata and they are assaulted by the said persons. The co-accused were holding the deadly weapon like iron rod by which he as well as other witnesses have assaulted and the co-accused snatched amount of Rs.15,000/- from his pant pocket. During the investigation, the Investigating Officer has recorded the

statement of another witness Manoj alias Mangesh Devidas Borakhade, who has also stated the involvement of the present applicant in the alleged offence. The statement of Ram Devkate also shows the involvement of the present applicant in the alleged offence. During investigation the investigation Officer has collected the CDR/SDR report regarding the cell phone of the present applicant. The cell phone no.9665743813 was registered in the name of present applicant Mohd. Azhar Yusuf Deshmukh residing at Jalgaon Jamod. The CDR/SDR report reflects that there was exchange of phone calls between the present applicant and other co-accused. Thus, *prima facie* material, which is placed on record by the Investigation Officer sufficiently shows the involvement of the present applicant in the alleged offence. There are criminal antecedents against the present applicant as previously three crimes were registered against the present applicant.

12. The first and foremost consideration while considering the anticipatory bail application is whether *prima facie* case is available against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds. Even if the custodial interrogation is not required cannot be sufficient to grant anticipatory bail to the applicant.

13. After perusal of the investigation reports, it revealed that the involvement of the present applicant is revealed. Not only from the statement of the witnesses but also from the CDR/SDR reports, which categorically

states that there was communication between the present applicant and other co-accused. At this stage, the *prima facie* material regarding the communication between the present applicant and other co-accused is sufficient to show the involvement of the present applicant. Incriminating weapons, vehicle used in the commission of the crime and the amount which was snatched from the informant, is already recovered from the co-accused.

14. The Hon'ble Apex Court in the case of ***X vs. Arun Kumar 2022 LiveLaw (SC) 870*** observed that even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail. In the present case, considering the nature of the allegation, the custodial interrogation of the present applicant is required.

15. For the reasons aforesaid, the application for grant of anticipatory bail deserved to be rejected as it is not a fit case, wherein the discretion can be exercised to grant anticipatory bail to the present applicant/accused.

16. In view of the that, the application stands rejected.

(URMILA JOSHI-PHALKE, J.)