

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

CRIMINAL APPLICATION (ABA) NO.257 OF 2023

Suresh s/o Bhimaji Dangari and another
Vs.

State of Maharashtra Through P.S.O. Police Station, Hinganghat, Tah. Hinganghat,
District Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. R. Sambaray, Counsel for applicants.
Mr. M. J. Khan, APP for Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/06/2023

1. The present application is filed by the applicants for grant of anticipatory bail in the event of their arrest in connection with Crime No.349/2023 registered with Police Station Hinganghat for the offence punishable under Section 3 of Prevention of Damage to Public Property Act, 1984 read with Section 34 of the Indian Penal Code.

2. The applicants are apprehending arrest at the hand of police as one Vivek Purushottam Muneshwar has lodged report against the present applicants on an allegation that on 06.04.2023 when he was present in the Grampanchayat office he received the information that a pipe line was damaged and water is flowing from the said pipe line. Therefore, he immediately visited the

spot of incident and it reveals to him that the present applicants have broken the said pipe line in presence of two persons and caused the damage to the public property.

3. As per the contention of the applicants that due to the political rivalry in the village, they are falsely implicated in the alleged offence. It is further contended that applicant No.1 is agriculturist and had contested Zilla Parishad election in the past and the applicant No.2 is nephew. There are two rival political groups in the village and therefore, they are falsely implicated. In fact, they are the poor agriculturist not the owner of JCB. Their custodial is not required and at all required and hence, they be released on anticipatory bail in the event of their arrest.

4. The said application is strongly opposed by the State on the ground that their custodial interrogation is required as they caused damage to the public property wroth of Rs.35,000/- and near about 50,000/- liters water was wasted due to the act of the applicants. As the JCB is to be seized therefore, their custodial interrogation is required and hence, application deserves to be rejected.

5. Heard learned Counsel Mr. Sambaray for the applicants. He reiterated the contentions and submitted

that absolutely there no material on record to show that present applicants are the owners of JCB. Due to the political rivalry on the basis of statements of two witnesses who are rivals of the present applicants, they are implicated in the alleged offence. In fact, no investigation is carried to show that the applicants are the owners of the JCB and they have caused the damage to the said pipe line. Their physical custody is not required and they be released on anticipatory bail in the event of arrest.

6. Per contra, learned APP strongly opposed the application on the ground that custodial interrogation is required for seizure of the said JCB.

7. The alleged offence punishable under Section 3 of the Prevention of Damage to the Public Property Act read with Section 34 of the Indian Penal Code the maximum punishment for the alleged offence is one year. This Court has already observed that the Investigating Officer is bound to follow the directions issued by Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in (2022) 10 SCC 51 and **Arnesh Kumar Vs. State of Bihar** reported in (2014) 8 SCC 273 and also to abide by the Standing Order No.3 of 2022 dated 20/07/2022 issued by the Director General of Police, Mumbai.

8. The Hon'ble Apex Court in above two cases, issued the directions and laid down a complete mechanism for investigating a crime, where the offence alleged is not punishable for more than seven years.

9. In case of **Arnesh Kumar**(supra), the Hon'ble Apex Court while considering the offences punishable up to 7 years, has held that the compliance of Section 41 of the Code of Criminal Procedure is mandatory and opined that if provisions of Section 41 of the Code is complied, then number of cases which come to the Court for grant of anticipatory bail will substantially reduce. The Apex Court further held that the Police Officer, before arresting, must put a question to himself; why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions of Section 41 of the Code is satisfied, power of arrest should be exercised. The Court then directed the State Government to provide to all the Police Officers a check list containing specified sub-clauses under Section 41(1)(b) (ii). The Police Officers are required to forward the check list duly filled and furnish the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The Hon'ble Apex Court then directs the Magistrate to peruse the report furnished by the Police Officer and only after recording its satisfaction,

the Magistrate will authorise detention. It is further directed that the decision not to arrest an accused should be forwarded to the Magistrate within two weeks from the date of the institution of the case. Such decision could only be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. The Apex Court has then held that the failure to comply with the directions aforesaid shall apart from rendering the Police Officer concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction. The Apex Court has also held that non-compliance of Section 41 of the Code entitles the accused to grant of bail.

10. This Court further observed that in view of the directions firstly, the police officer has to take a decision whether or not the accused should be arrested. He has to record the reasons in writing in support of the decision. If the Police Officer takes decision 'not to arrest' the accused, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/FIR.

11. In view of the said directions it is submitted by the learned APP that custodial interrogation of the present applicants is required to seize the JCB. I have perused the investigation papers and the statements of

the witnesses. During investigation statements of two eye witnesses are recorded which shows that applicant No.1 is the owner of the said JCB. Admittedly, no investigation is carried out by the Investigating Officer to show that the applicant No.1 is the owner of the said JCB. The only contention raised by the prosecution is that the custodial interrogation of the present applicants is required to recover the JCB. In fact, investigation is required to show that the applicant No.1 is the owner of the JCB. The Investigation Officer is present before the Court he also has not successfully replied the query of the Court that on what basis he come to the conclusion that present applicant No.1 is the owner of the said JCB. This Court has considered all these issues and protected the present applicants by granting ad-interim anticipatory bail. After due investigation also the Investigation Officer cannot point out for what purpose the custody of the present applicants is required, when there is no investigation regarding the ownership of the said JCB. In view of the above observations, the interim protection granted to the present applicants by this Court deserves to be confirmed, as Investigation Officer failed to address the necessity of the arrest of the present applicants in the above said fact. For the reasons recorded above, the interim protection granted to the present applicants deserves to be confirmed. Hence, I proceed to pass following order:-

(i) In the event of arrest in Crime No.349/2023, registered with Police Station, Hinganghat, District Wardha for the offence punishable under Section 3 of the Prevention of Damage to Public Property Act, 1984 read with Section 34 of Indian Penal Code, 1860, applicant No.1 Suresh Bhimaji Dangari and applicant No.2 – Sudhir Krushnaji Dangari, be released on bail on furnishing PR Bond in the sum of Rs.25,000/- each with one solvent surety each in the like amount.

(ii) The applicants shall attend the concerned Police Station, as and when required for investigation purpose.

(iii) The applicants shall submit their mobile/phone number along with their address with address proof, before the Investigating Officer.

(iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate