

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

CRIMINAL APPLICATION (ABA) NO. 293/2023

ATMARAM UTTAMRAO MALEKAR
VS
STATE OF MAH. THR. PSO, ANDHERA, TQ. CHIKHLI, DIST. BULDANA.

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

Court's or Judge's Order

Mr S.V.Sirpurkar, counsel for the applicant.

Mr S.M.Ghodeswar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/06/2023.

1. Heard.
2. Present application is for grant of anticipatory bail in the event of his arrest in respect of Crime No.70/2023 registered with Police Station, Andhera, District Buldhana for the offences punishable under Sections 326, 324 and 506 of the Indian Penal Code.
3. The applicant is apprehending arrest at the hands of Police as crime is registered on the basis of report lodged by Satish Anandrao Khedekar. The accusation against the present applicant is that on 03/03/2023 at about 9.00p.m. he had been to have a dinner in one hotel. At that time, the present applicant was there and he demanded money from the informant for consuming liquor as the informant declined to pay

him money, he gave the blow and assaulted by the thresher blade and threatened him. Due to the said blow, he has sustained grievous injury. Immediately he went at home but as he was not feeling well, therefore, he approached to the Police Station, he was also admitted in the hospital.

4. As per the contention of the applicant that the allegation against the present applicant is out of previous enmity. In fact, no such incident has taken place, now investigation is completed and physical custody of the present applicant is not required. He is ready to co-operate with the investigating agency.

5. Learned APP strongly opposed the present application on the ground that the applicant has sustained two grievous injuries. Though he is discharged from the hospital however, the weapon is not yet recovered. Therefore, physical custody of the applicant is required and hence the bail application deserves to be rejected.

6. Heard learned counsel Shri S.V. Sirpurkar for the applicant he is submitted that as far as the custody for the purpose of the recovery is concerned, the applicant is ready to co-operate with the investigating agency. Only for the recovery purpose, the custody is not required. He further submitted that in view of that

directions issued by the Hon'ble Supreme Court of in the case of *Satender Kumar Anit V/s Central Bureau of Investigation and another; reported in (2022)10 SCC 51* and *Arnesh Kumar V/s State of Bihar, reported in (2014) 8 SCC 273*, the investigating officer has to satisfy himself. The custody of the present applicant is required. The investigating officer has not complied with the same. However, present applicant is ready to co-operate with the investigating agency, as far as the recovery is concerned.

7. Learned APP has strongly opposed the said application on the ground that considering the nature of injuries sustained by the injured, the application deserves to be rejected.

8. Having heard both the sides and on perusal of the investigation papers, it appears that investigating officer has already recorded the statements of the relevant witness. This Court, while considering the interim prayer of the present applicant observed that in view of *Arnesh Kumar's* case the 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 has 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 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 then 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 depart-

mental 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 with Section 41 of the Code would entitle the accused to grant of bail.

9. Thus, in view of the above observations of the Hon'ble Apex Court and the directions of 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.

10. Here in the present case, the directions issued by the Hon'ble Apex Court appears to be not followed by the Investigating Officer. There is no satisfaction on record of the Investigating Officer to show that arrest of the present applicant is required.

11. On perusal of the FIR and the various statements, it reveals that the injured has sustained two grievous injuries. However, considering that now he is discharged. Physical custody of the present applicant is not required for the interrogation purpose. So far as the recovery of the weapon is concerned, the applicant has shown his willingness that he will co-operate with the investigating agency and will produce the weapon before the investigating officer.

12. In view of the above, the criminal application deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order:

- a) Criminal application is allowed.
- b) The applicant in the event of his arrest is released on anticipatory bail in connection with crime No.70/2023 registered with Police Station, Andhera, District Buldhana for the offences punishable under Sections 326, 324 and 506 of the Indian Penal Code, executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c) The applicant shall attend the concerned Police Station and shall produced the weapon before the Investigating Officer. The period of producing the weapon would be considered as custody in view of Section 27 of the Indian Evidence Act.
- d) The applicant shall furnish his cell phone number and address with the address proof.
- e) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from

disclosing such facts to the Court or any Police Officer.

Criminal application is disposed of.

JUDGE