

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

CRIMINAL APPLICATION (ABA) NO.296 OF 2023

(Sandeep Prabhakar Shende Vs. 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 A.R. Ingole, Advocate for the applicant.
Shri M.J. Khan, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 15, 2023.

Heard.

2. Present application is filed by the applicant for grant of anticipatory bail in connection with Crime No.499/2022 registered at police station Chandur Railway, District Amravati for the offence punishable under Sections 302, 143, 147, 148 and 149 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of police as crime is registered against him on the basis of report lodged by Moin Khan Raheman Khan. It is alleged in the report that the deceased Naim Khan is his brother. There was no cordial relationship between him and his brother, and therefore, deceased was not residing along with him. Deceased was having first wife namely Rizwana and second wife namely Nikat Parveen. There were several offences registered against the deceased at Chandur Railway police station, and therefore, initially he

was not residing at Chandur Railway but from last 15 days he again came to reside at Rajiv Gandhi Nagpur, Chandur Railway. On 21/09/2022, his brother abducted one girl, daughter of Sayyed Farukh and crime was registered against him. Since then the father of said abducted girl was threatening him that he will kill him. On 23/09/2022 he received the a message that his brother was assaulted by several persons on account of kidnapping of the daughter of Sayyed Farukh. Immediately, he went at the spot and saw that the deceased has sustained various injuries on his person. On the basis of said report, police have registered the offence against the present applicant.

4. As per the contention of the applicant he is falsely implicated in the alleged offence. His name is not mentioned in the FIR. Due to political rivalry his name is shown as an accused and regarding the kidnapping he made agitation against the deceased, and therefore, his name is implicated. Now investigation is completed and the charge-sheet is filed. His custody is not required and hence he be released on anticipatory bail in the event of his arrest.

5. Said application is strongly opposed by the State on the ground that there are criminal antecedents against the present applicant. The involvement of the present applicant is revealed from the eye-witnesses, thus, there is a strong *prima facie* case against the present applicant.

6. As per the allegations of the eye-witnesses present applicant has assaulted the deceased by means of iron rod which is the incriminating article and it is to be recovered from the present applicant, therefore, his custodial interrogation is required and prayed for rejection of the application.

7. Heard learned Counsel for the applicant. He submitted that merely because of the political rivalry and present applicant has agitated against the deceased, he is falsely implicated. Now investigation is completed and the charge-sheet is filed. The custody of the present applicant is not required. He will cooperate with the investigation agency and he be released on anticipatory bail. In support of his contention he placed reliance on ***Sk. Supiyan alias Suffiyan alias Supisan Vs. Central Bureau of Investigation [2022 SCC OnLine SC 164]***.

8. Per contra, learned Additional Public Prosecutor submitted that the statement of the eye-witnesses sufficiently shows the involvement of the present applicant and the role assigned to the present applicant that he assaulted the deceased by means of iron rod. Said iron rod is to be recovered. The offence is of serious nature and hence application deserves to be rejected.

9. Having heard both the sides admittedly name of the present applicant is not mentioned in the FIR. During investigation the statements of various witnesses

are recorded including the eye-witnesses. From the statement of the eye-witnesses it reveals that the present applicant was present at the spot of incident and the role assigned to the present applicant that he assaulted the deceased by means of iron rod. Said iron rod is the incriminating article which is required to be recovered from the present applicant.

10. I have also perused the cited decision of the Hon'ble Apex Court. After going through the facts of the case it reveals that during the investigation none of the witnesses has named the appellant as an accused in a cited case. Even the charge-sheet filed by the CBI has not named the applicant as an accused. The Apex court has considered all this aspect and allowed the application. The facts of the present case shows that there are several eye-witnesses who witnessed the present accused and from their statement the involvement of the present accused reveals.

11. The consideration for grant of anticipatory bail and grant of regular bail are admittedly different. While considering the anticipatory bail the severity of the crime is required to be looked into. Here the allegation against the present applicant is of serious nature. He is involved in the actual assault on the deceased. Thus, *prima facie* material is sufficient to show the involvement of the present applicant in the alleged offence.

12. Considering the same his custodial interrogation of-course required for the investigation purpose. Thus, the application for the anticipatory bail deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*