

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

CRIMINAL APPLICATION NO.312 OF 2023

(Subhash s/o Nagorao Ishwarkar ..vs.. State of Maharashtra)

AND

CRIMINAL APPLICATION NO.329 OF 2023

(Ashish s/o Nagorao Ishwarkar and anr. ..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 D.V. Chauhan, Advocate a/w Shri N.P. Jadhav, Advocate for the
applicants.

Shri M.J. Khan, A.P.P. for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JUNE 27, 2023.

Heard.

2. Both the applications are filed by the applicants namely Subhash s/o Nagorao Ishwarkar, Ashish s/o Nagorao Ishwarkar and Nagorao s/o Bakaram Ishwarkar for grant of anticipatory bail in connection with Crime No.261 of 2023 registered with the Ner Parsopant Police Station District Yavatmal for the offence punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The applicants are apprehending arrest at the hands of the Police as crime is registered on the basis of the report lodged by Harish Rajeshwar Gulhane on an allegation that on 11/04/2023 at about 8.00 a.m. his brother Manish Rajeshwar Gulhane had been to the

agriculture field and the informant was at home. He received the phone call of his brother Manish, who informed that there is one JCB in the agricultural land of Nagorao Ishwarkar and they are digging the soil and putting it into the drain, which is in their agricultural field. Immediately, the informant went at the agricultural field and asked them not to put the soil in the said drain, but there was quarrel between them and in the said quarrel, applicant Subhash Ishwarkar picked up the sprinkle rod and gave a blow of the said rod on his legs as well as on his head. Due to the said blows, he sustained the head injury as well as fracture injuries. He further alleged that the applicants Nagorao Ishwarkar and Aashish Ishwarkar have also assaulted him by means of stone and fists blows. On the basis of said report, the Police have registered the crime against the present applicants.

4. As per the contention of the present applicants that alleged incident has not taken place as narrated by the informant. On 11.04.2023 at about 8:30 to 9:00 a.m. they have called one JCB in their agriculture field and the JCB driver was working in the agricultural field of the applicants. However, Harish Gulhane who is the informant and his brother Manish Gulhane started quarrel with them and they have caused injury by means of fist blows and by biting to his fingers, therefore, he sustained the bleeding injuries. He immediately lodged the report against the informant and his brother, which is

registered vide Crime No.245 of 2023 for the offence punishable under Sections 324, 506 read with Section 34 of the Indian Penal Code.

5. It is the contention of the applicants that only to give counter blast to the complaint lodged by the applicants, this false report is lodge with the serious allegations. Their custodial interrogation is not required, and hence, they be released on bail in the event of the arrest.

6. Heard the learned Counsel Shri D.V. Chauhan for the applicant. He submitted that the applicant Subhash Ishwarkar is serving as an Army Officer and he is from very respectable family. He is serving at the border at Jammu and Kashmir. He further invited the attention towards the charge-sheet, which is filed in respect of the Crime No.245 of 2023. He further invited my attention towards the various statements recorded by the Investigating Officer and submitted that none of the witnesses have stated that applicant Subhash Ishwarkar has picked up the sprinkler rod and gave a blow of the rod to Harish Gulhane. Thus, the allegation apparently seems to be false only to give counter blast to the report lodged the by present applicants. He further submitted that considering the allegations that applicant Subhash Ishwarkar assaulted the sprinkler rod, applicant no.2 Aashish Iswarkar is ready to furnish the said sprinkler rod before the Investigating Officer. Custodial interrogation of

the present applicants is not required. Now injured is already discharged from the Hospital.

7. As far as the allegations regarding the alleged incident is concerned, the conditions be imposed and they will abide by all the conditions.

8. Said application is strongly opposed by the State. Learned A.P.P. submitted that Harish Gulhane was immediately taken to the Hospital. The investigation papers shows that he had sustained the grievous injuries like head injury as well as fracture of metatarsal. Admittedly, he is now discharged from the Hospital. However considering the weapon used by the applicant Subhash Ishwarkar, his physical custody is required and hence the application deserves to be rejected.

9. Heard both the sides. Perused the investigation papers. Admittedly, cross complaints were filed against each other by the informant as well as the applicant Subhash. There is no dispute regarding the occurrence of the alleged incident. Admittedly, the statements recorded by the Investigating Officer while carrying out the investigation in Crime No.245 of 2023, none of the witnesses are saying that the present applicant Subhash has picked up the sprinkler rod and gave the blow of the said rod to the injured Harish Gulhane. These witnesses are the driver of the JCB and the person who was present in the adjacent field. At the same time,

investigation in respect of Crime No.261 of 2023 is also carried out. Admittedly, FIR is lodged after 4 days of the incident. However said delay is explained by the informant in the FIR. Said delay is to be considered in the light of the medical certificate. The medical certificate shows that Harish was admitted in the hospital from 11.04.2023 to 13.04.2023, that is also in the Government Medical College and Hospital, Yavatmal. The first injury certificate shows that he has sustained contusion on left foot and CLW on left parietal region and other parts of the body. Thereafter, he shifted to Shri Vasantrao Naik Government Medical College and Hospital, Yavatmal. The medical certificate discloses that the informant Harish has sustained the injury like fracture and head injury. Therefore, there is a substance in the contention of the learned Additional Public Prosecutor that in the alleged incident, the informant Harish has sustained the grievous injuries.

10. While granting anticipatory bail, factors and considerations are to be looked into. While considering the anticipatory bail, the Court has to consider the nature and the gravity of the accusation and the exact role of the accused. The antecedents of the applicants, possibility of the applicants to flee away from the justice, the possibility of the accused likelihood to repeat similar type of offence or whether the accusation have been made only with the object of injuring or humiliating the applicant by arresting him or her.

11. In the present case, admittedly, the injured is discharged from the Hospital and he is out of danger. As far as the custody of the applicant Subhash is concerned for the purpose of recovery of weapon, the learned Counsel Shri Chauhan has submitted that the applicant Ashish will produce the said weapon and the said recovery is to be considered by considering the period as his detention or a custody for the purpose of Section 27 of the Indian Evidence Act.

12. Learned A.P.P. vehemently submitted that, the physical custody of the present applicant is required for the interrogation purpose also.

13. Considering the entire scenario of the occurrence, admittedly, there was no premeditation and the incident occurred in a heat of passion, in a sudden fight and sudden quarrel. Both the parties have assaulted each other and the members of both the parties have sustained the injuries. Now, whether said injuries are sufficient to cause death or not is a matter of evidence. At this stage, the injured is already discharged from the hospital. The aspect of the production of the weapon can be considered by directing the applicants to produce the said weapon and said can be considered as their custody for the purpose of Section 27 of the Indian Evidence Act.

14. In view of that the physical custody of the present applicants is not required. As far as the allegation

against Nagorao Ishwarkar is concerned, it is general in nature. For the above reasons, both the applications deserve to be allowed by imposing certain conditions. Hence, the following order :

(a) The applications are allowed.

(b) In the event of arrest, the applicants namely Subhash s/o Nagorao Ishwarkar (in Criminal Application (ABA) No.312 of 2023) and Ashish s/o Nagorao Ishwarkar and Nagorao s/o Bakaram Ishwarkar (in Criminal Application No.329 of 2023) are released on anticipatory bail in connection with Crime No.261 of 2023 registered with the Ner Parsopant Police Station District Yavatmal for the offence punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code on their furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty five thousand) each with one solvent surety each in the like amount.

(c) The applicant - Ashish Nagorao Ishwarkar shall produce the sprinkler rod before the Investigating Officer and said period be considered as his custody for the purpose in view of Section 27 of the Indian Evidence Act.

(d) The applicants - Ashish s/o Nagorao Ishwarkar and Nagorao s/o Bakaram Ishwarkar shall attend concerned Police Station as and even required for the investigation purpose.

(e) The applicants shall furnish their cell phone numbers and address with their address proof.

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

15. Both the applications are disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*