

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

CRIMINAL APPLICATION (ABA) NO.434 OF 2023

(Suraj s/o Sanjay Prasad 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 M.V. Rai, Advocate for the applicant.
Shri S.M. Ghodeswar, APP for State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 24, 2023.

Heard.

2. Present application is filed for grant of anticipatory bail in the event of arrest of the applicant in connection with Crime No.591/2016 registered at police station Khaparkheda, District Nagpur for the offence punishable under Sections 143, 144, 147, 148, 307 read with 149 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951.

3. The applicant is apprehending arrest at the hands of police as one Ramesh Suryawanshi lodged report with police station Khaparkheda on 05/12/2016 alleging that on the day of incident one of his friend Akbar came to him and disclosed that some persons have assaulted his brother Bahua @ Raju Suryawanshi near the house of one Jonty Pande and caused injuries to him. Then he went to Sillewada and boarded in the Ambulance in which his brother Bahua was removed to the hospital. He inquired

with his brother who disclosed that at about 3:00 p.m. he went to the house of Jonty Pande and while returning Jonty was given slap to him on the count of previous quarrel with one Shahjad. Thereafter the friends of said Jonty Pande assaulted him including Gopal Pande, Dipak Sharma and other co-accused. On the basis of said report police have registered the crime against the present applicant as well as the other co-accused.

4. As per the contention of the present applicant that his name is neither mentioned in the FIR nor stated by the injured. None of the eye-witnesses have implicated him as the assailant. He is implicated as an accused only on the basis of CCTV footage and on the basis of the statement of co-accused Akshay Totewar who has identified him as an assailant by witnessing the CCTV footage. As per the contention of the applicant that now investigation is completed and charge-sheet is filed against other co-accused and present applicant is shown as absconding.

5. Said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present applicant.

6. Present applicant is absconding since 2016. The charge-sheet is filed against him under Section 299 of the IPC. The applicant is identified by the co-accused after witnessing the CCTV footage. His custodial interrogation is required as T.I. parade is to be held as well as the

seizure of the waist belt is to be carried out. Thus, there is a *prima facie* case against the present applicant and hence his custodial interrogation is required.

7. Heard learned Counsel for the applicant. He submitted that the applicant was not knowing regarding the registration of the crime against him. Recently, he came to know regarding the registration of the crime. Moreover, in the entire charge-sheet there is no single witness who disclosed the name of the present applicant as an assailant. Even injured has not disclosed the name of the present applicant as an assailant. Merely on the basis of the identification by the co-accused after witnessing the CCTV footage, present applicant is implicated.

8. Considering the investigation is completed and charge-sheet is filed, custodial interrogation of the present applicant is not required and hence he be protected by granting anticipatory bail.

9. Per contra, learned Additional Public Prosecutor vehemently submitted that in the CCTV footage the applicant was seen assaulting the injured by means of waist belt. He was identified by co-accused Akshay Totewar as an assailant. Thus, *prima facie* material is against the present applicant to connect him with the alleged offence. Hence, application deserves to be rejected.

10. Having heard both the sides and perused the investigation papers. During investigation, the statement of the injured as well as the statement of various eye-witnesses is recorded. During investigation, the Investigating Officer has recorded the memorandum statement of the co-accused Jonty @ Prakash Satyadev Pande. On the basis of the memorandum statement, the CCTV footage was verified by the Investigating Officer. During the said verification of the CCTV footage, present applicant alleged to be seen assaulting the injured by means of waist belt. Admittedly, the injured has also neither stated the name of the present applicant nor assigned any role to the present applicant. As far as the implication of the present applicant is concerned, is on the basis of the memorandum statement and verification of the information given by the co-accused from the CCTV footage. Admittedly, the Investigating Officer has not recorded the statement of the person who has transcribed or copied the CCTV footage. The Investigating Officer has obtained the certificate from one Swapnil Shivkumar Bangare but his statement is not recorded who has witnessed the CCTV footage as well as who has copied the said CCTV footage. Thus, from the investigation papers *prima facie* case is not made out against the present applicant to show his involvement.

11. Considering that CCTV footage which is witnessed by the Investigating Officer in presence of the panchas wherein the co-accused has identified the present

applicant as an assailant by the waist belt. For that purpose the custodial interrogation of the present applicant is alleged to be required by the Investigating Agency.

12. Considering the role assigned to the present applicant and as far as the recovery of the waist belt is concerned, some conditions can be imposed on the present applicant. Except that CCTV footage, no other material is on the record to connect the present applicant that the alleged offence. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant - Suraj s/o Sanjay Prasad in connection with Crime No.591/2016 registered at police station Khaparkheda, District Nagpur for the offence punishable under Sections 143, 144, 147, 148, 307 read with 149 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, be released on anticipatory bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station on 28/07/2023 and shall produce the waist belt and this period will be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

(iv) The applicant 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.

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*