

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

**CRIMINAL APPLICATION (ABA) NO.879/2022**

Shakti s/o Bansi Kamble and anr. Vs. State of Maharashtra & another

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

Court's or Judge's orders

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Mr. S.P.Dharmadhikari, Senior Advocate assisted by A.S.Shukla, Advocate for the applicants.

Mr. M.J. Khan, APP for State.

Mr. A.D.Bhate, Advocate for the Informant.

**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : 04/07/2023**

1. Present application is preferred by the applicants for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in Crime No.0275/2022 registered with Police Station, Kotwali, District Akola, for offences punishable under Sections 377, 354, 341, 343, 348, 357, 358, 362, 368, 394, 324, 326, 330, 331, 447, 452, 201, 504, 506, 509, 34 read with Section 120-B of the Indian Penal Code.

2. The applicants are apprehending arrest at the hands of the police as crime is registered on the basis of directions issued by the learned Judicial Magistrate First Class in the proceedings under Section 156 (3) of the Code of Criminal Procedure, vide Criminal Application No. No.1254/2022. The allegation against the present applicants is that the complainant was alleged to have purchased gold involved in the theft of gold and the complainant was apprehending arrest in the said offence of theft and interrogated by the police. While interrogating, he was subjected to cruelty and

third degree of torture by the police. It is further alleged that he was also subjected for the unnatural sexual assault by another suspects in the offence involved two persons. The complainant was under police custody for four days and was released on 17.1.2022. Thereafter, the complainant lodged report with the Superintendent of Police, Akola, who initiated inquiry and since there was no progress in the inquiry, the complainant has filed application under Section 156(3) of the Code of Criminal Procedure before the learned Judicial Magistrate First Class and the directions were issued therein by the learned Judicial Magistrate First Class to investigate the matter including the direction to obtain CCTV footage of LCB, Akola at the relevant place and residence of the complainant. Thus, on the basis of the directions issued by the learned Judicial Magistrate First Class, Crime is registered. The present applicants are police constables working in the local crime branch, Akola. As per the contentions of the applicants, the present complainant was accused in another crime and during investigation some gold was recovered from him. He was produced before the learned Magistrate and after his arrest within 24 hours, however, he has not made complaint before the learned Magistrate about torture and filed false report against present applicants. It is further contended by the applicants that they were police constables and part of the team formed for investigation purpose. Leader of the team i.e. Nitin Chavan, who was Police Inspector, is already released on bail by this Court in the event of his arrest. The custodial interrogation of the present applicants are not at all required, as nothing is to be recovered from them. As the co-accused i.e. Nitin Chavan and driver of the police vehicle are already released

on anticipatory bail in the event of arrest, considering the role of the present applicants, they be granted anticipatory bail.

3. Said application is strongly opposed by the State on the ground that after registration of the offence, investigation was transferred to State CID and investigation is initiated. During the course of investigation, the investigating agency has recorded statements of the relevant witnesses. From the statements of relevant witnesses, it reveals that, from the possession of present applicants, seized 30 grams gold from one Mayur Madan Verma, which is not deposited in the police station. Thus, that gold is not deposited in the Court and therefore, their custodial interrogation are required. Further objection raised by State is that there is injury certificate issued by doctor, as some altercations were made and therefore, investigation to that effect is to be carried out. The custodial interrogation of the applicants is very much necessary to ascertain whereabouts of other accused who is working as doctor and treated the complainant when he was physically tortured. Thus, custody of the present applicants is required.

4. Said application is strongly opposed by the Objector, who is first informant, on the ground that he was subjected to unnatural sexual assault and physical assault while in the custody of the applicants. He has sustained burn injury in the custody. Thereafter he was released on bail and he lodged complaint to the Superintendent of Police, Akola and requested to take action against the present applicants, however, no action was taken and therefore, he approached the Judicial Magistrate First Class and filed application for

seeking directions under Section 156 (3) of the Code of Criminal Procedure. It is further contended by the Objector that the custodial interrogation of the present applicants, of course, required for interrogation purpose as well as considering the serious allegation, the application deserves to be rejected.

5. Heard learned Senior Counsel for the applicants. He invited attention regarding the observations of this Court in earlier Criminal Application (ABA) No.792/2022 (Nitin Bhimrao Chavan Vs. State of Maharashtra) wherein this Court has observed that the informant was arrested on 10<sup>th</sup> January, 2022 in Crime No. 3/2022 on the allegation that he indulged in purchasing stolen gold being goldsmith from the habitual offender namely Rajesh Raut, Ashish Karale and Yogesh Savale. Thus, the stolen gold was seized from the informant. This Court further observed that the report submitted by the Sub-Divisional Police Officer on a complaint made by the informant against the applicant about torture and illegality committed shows that during remand, no complaint was made by the informant about any torture or sexual assault though he was present before the Court along with his brother Advocate Ritesh Verma. It is further observed that medical report which was produced on record did not substantiate the allegation regarding burn injuries as the burn injuries are shown to be four days old. Even if it is considered that the informant was arrested on 9<sup>th</sup> January 2022 and not on 10<sup>th</sup> January, 2022, the burn injuries are old one. This Court also considered the medical report dated 14<sup>th</sup> January, 2022 and observed that injuries are ten days old. This Court while considering the bail application also

considered the fact that there is no prima facie evidence to show that burn injuries as alleged by the informant because of pouring of hot water by the applicants and released co-accused on anticipatory bail. He submitted that during the investigation, the Investigating Officer has collected material and filed charge-sheet against the informant, which shows that the golden articles which are seized from the present applicants through seizure memos have already been deposited in the police station and muddemal receipts are filed along with charge-sheet. Thus, he submitted that the contention regarding for non-depositing of the gold is also not sustainable. He submitted that prime accused was released on anticipatory bail, present applicants against whom there is no material to show that these are present applicants are collected said golden articles and not deposited the same before the Court. The Investigating Officer has not challenged the order of this Court releasing co-accused on bail. Considering all these, applicants be released on bail in the event of their arrest as their custodial interrogation is not required.

6. Per contra, learned APP submitted that statement of one Mayur Madan Verma shows that the applicant no.1 has threatened him and, therefore, he has handed over 30 grams gold to the team of the investigation which was seized but, it was not shown to be seized. Thus, custodial interrogation of the present applicants is required. He further submitted that investigation is carried out by CID and the material collected by the Investigating Officer during investigation discloses that present applicants are involved in the torturing the informant. They are also involved to obtain gold illegally from the

witness Mayur Verma, which is not shown to be recovered. Thus, the interrogation of the applicants is required and therefore, bail application deserves to be rejected.

7. Learned counsel Mr. A.D.Bhate also raised objection on behalf of the objector/informant and reiterated the contention, as raised in his reply and submitted that considering the serious nature of offence, bail application of the applicants deserves to be rejected.

8. After hearing the applicants, objector and learned APP, investigation papers were perused. Regarding the said incident, the SDPO has carried out the inquiry and it is observed by him in his inquiry that the informant was arrested on 10<sup>th</sup> January, 2022 in Crime No.3/2022 on the allegation that he is involved in purchasing stolen material being gold from Ashish Karale. The said stolen gold was seized from the informant. The seizure memos are on record which show that gold recovered from the informant was deposited as muddemal and the muddemal receipts are filed on record. On 15<sup>th</sup> January 2022, the informant was released on bail in the said crime. It was also reveals from the record that he was produced before the Judicial Magistrate First Class. At the relevant time, his brother who is an Advocate, by profession, was also present before the Court. Neither the informant nor his brother have made any complaint of any torture before the Judicial Magistrate First Class against any Police Officer. The report submitted by the SDPO further reveals that as far as the allegation of the informant is concerned, regarding unnatural sexual assault on the said fact is also not informed to the learned Judicial Magistrate First

Class by the informant or his brother who is an Advocate. This Court has already observed in earlier bail application that as far as allegations that the applicant asked co-accused in Crime No.3/2022 to put their private parts in the mouth of the informant, both the co-accused in their statement, are denied any such incident. It is imperative to note that when the statements were recorded, they were not in police custody but, they were on bail. The said two co-accused in their statements under Section 164 of the Code of Criminal Procedure also denied that incident attracting Section 377 of the Indian Penal Code.

9. I have also perused the same statement and it shows that they have denied the incident attracting Section 377 of the Indian Penal Code. The CCTV footage collected by the prosecution shows that the informant was brought to the police station he was not able to walk properly. It has also come on record that some police staff poured some liquid on the legs of the informant but, it was not hot water because after pouring of the said liquid there was no reaction was found which otherwise in normal case would have been. The Medical report dated 10<sup>th</sup> January, 2022 shows that the burn injuries found on the leg of the informant were four days old. Hence, even if it is considered that the informant was arrested on 9<sup>th</sup> or 10<sup>th</sup> January 2022, the burn injuries are old one. The learned APP vehemently submitted that there are altercations in the medical certificate and investigation is to be carried out regarding role of the present applicants as well as who has made some altercations. Admittedly, though investigation is handed over to the CID and statement of the Medical Officer is not on record to ascertain altercation was

by third person or by the doctor himself. Thus, prima facie evidence is not there to show that the burn injuries as alleged by the informant were caused as alleged by the informant were caused because of pouring of hot water by the applicants or co-accused in the present crime. Learned APP relied upon the statement of Mayur Madan Verma. As per his statement applicant no.1 threatened him and therefore, he has handed over the said gold to the Investigating Agency. His statement was also recorded earlier. In the earlier statement dated 15.1.2022 he has not uttered a single word that it was present applicants, who have threatened and therefore, he handed over said gold to the Investigating Agency. His earlier statement only discloses the name of one Vijay Yadav and Virendra Lad. Thus, there is no whisper of role of present applicants in the earlier statement. As far as the material against the applicants is concerned, at this stage, there is absolutely no material to show that it was present applicant no.1, who has obtained said gold and not accounted it by depositing the same to the police station.

10. In the light of above circumstances, even if there is prima facie material that the informant was arrested by the applicants on 9<sup>th</sup> January 2022 and his arrest was shown on 10<sup>th</sup> January 2022, custodial interrogation of the present applicants is not required as nothing is required to be recovered from the applicants. The investigation before the Inquiry Officer nowhere shows that the said gold was in possession of the present applicants and he has obtained said gold from Mayur. Two statements of Mayur are on record and both statements are contradictory and in earlier statement it has not stated that the applicant no.1 has received the said

gold. Thus, in the above referred circumstance and considering the fact that the applicants are in government service, there is no possibility that he will not attend the matter and absent or flee from the place of residence and therefore, criminal application deserves to be allowed. The applicants are also to be released on anticipatory bail in the event of their arrest as two other accused are also released on anticipatory bail, who are having similar role. Accordingly, I proceed to pass following order:-

- (i) Criminal Application is allowed.
- (ii) The applicants in the event of arrest of Shakti S/o Bansi Kamble and Sandeep S/o Ganeshrao Katkar in respect of Crime No.0275/2022 registered with Police Station, Kotwali, Akola, for offences punishable under Sections 377, 354, 341, 343, 348, 357, 358, 362, 368, 394, 324, 326, 330, 331, 447, 452, 201, 504, 506, 509, 34 read with Section 120-B of the Indian Penal Code, be released on bail on executing PR bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) each with one surety each in the like amount.
- (iii) The applicants shall attend Police Station as and when required for investigation purpose before the Investigating Officer at CID Branch.
- (iv) The applicants shall not induce, threat or promise to any witnesses, who are acted with the alleged crime.

Criminal Application stands disposed of.

**(URMILA JOSHI-PHALKE, J.)**