



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

CRIMINAL APPLICATION (ABA) NO. 715 OF 2023

Krushna Sunil Maliye .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

Mr. R.M. Tahaliyani, counsel for the applicant.

Mrs. M.A. Barabde, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/11/2023.

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No. 133/2023 registered with Police Station Dabki Road, Akola for the offences punishable under Sections 392 and 395 read with Section 34 of the Indian Penal Code, 1860.

2. The applicant is apprehending arrest at the hands of the Police as the crime is registered against the three unknown persons in respect of the offence punishable under Section 392 read with Section 34 of the Indian Penal Code, 1860. On the basis of report lodged by Devanand Gaininath Khandare, who alleged that he is serving as Security Guard of Godown of one Nandlal Hakikatrai Motwani along with Prakash Sukhdev Surwade.

In the intervening nights of 26/05/2023 and 27/05/2023 at about 2.00 a.m., three people between the age group of 25 to 30 entered the premises. Out of them, one caught hold of him and two others tied his hands and legs and took him to the terrace, and they broke the CCTV Cameras of the Godown, broken the shutter and took out the boxes of cigarettes, loaded them into the TATA Ace vehicle bearing No. MH-30 AV-0515 and fled away from the spot of the incident. On the basis of said report, the police have registered the crime.

3. The learned counsel for the applicant Mr. R.M. Tahaliyani submitted that the name of the present applicant is implicated merely on the basis of the statement of the co-accused who is his brother, namely Aatish Sunil Maliye. The clothes of the present applicant alleged to be seized from his brother, and the incriminating articles were also recovered at the instance of his brother i.e. co-accused Aatish Sunil Maliye.

4. He further submitted that as per the prosecution case, only three persons entered in the premises, whose description is narrated by the informant, which also reveals from the C.C.T.V. Footage Panchanama. The faces of the said persons were covered, therefore, the

question of identification does not arise. Merely on the basis of the statement of co-accused, the prosecution of the present applicant is not sustainable. His custodial interrogation is also not required, as nothing is to be recovered from the present applicant. In fact, the connection of the present applicant with the alleged crime is not reflected from the investigation papers. In view of that, the present applicant be released on anticipatory bail.

5. The learned APP Mrs. M.A. Barbde strongly opposed the application on the ground that the involvement of the present applicant is revealed from the statement of the co-accused. At the instance of the co-accused, the clothes of the present applicant is recovered, which shows that one Saffron Colored Dupatta was seized, which was used by the present applicant to cover his face.

6. She further submitted that the C.C.T.V. Footage also shows that the persons entered in the premises were wearing black clothes, and out of them, one person had covered his face with the Saffron Colored Dupatta. Thus, the investigation papers reveals the involvement of the present applicant in the alleged offence. Considering the same, a criminal application deserves to be rejected.

7. Having heard learned counsel for the applicant, perused the investigation papers. Admittedly, the FIR is registered against the three unknown persons. The informant has narrated the description of the dacoits who entered into the premises. As far as the said description, the person entered into the premises was wearing black T-shirts, Black Color Lower and shows that one of them has covered a face by the Saffron Color Dupatta. Admittedly, the said Saffron Colored Dupatta was seized at the instance of the brother of the present applicant.

8. Thus, the entire investigation papers connects the co-accused Aatish Maliye but there is no single material to connect the present applicant with the alleged offence. Even though it is not the case of the prosecution that, some of the articles are remained to be seized from the present applicant. The entire articles are already seized from the Godown which is in the possession of the co-accused Aatish Maliye.

9. Considering the entire material on record, there is no single piece of material to connect the present applicant with the alleged offence. Merely on the basis of the statement of the co-accused, his name appears to be implicated in the alleged offence. Now, investigation

is also appears to be completed and charge-sheet is filed against the co-accused.

10. Furthermore, considering the nature of the material collected during the investigation, no prima-facie case is made out against the present applicant to show the involvement. In view of that, criminal application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

- A] The criminal application is allowed.
- B] In the event of arrest, the applicant – Krushna Sunil Maliye connection with Crime No. 133/2023 registered with Police Station Dabki Road, Akola for the offences punishable under Sections 392 and 395 read with Section 34 of the Indian Penal Code, 1860, is hereby released on anticipatory bail on executing PR. bond of Rs. 25,000/- with one solvent surety in the like amount.
- C] The applicant shall attend the concerned Police Station as and when required for the investigation purpose.
- D] The applicant shall furnish his cell phone numbers and his address along with the

address proof with the investigating agency and provide names of the two relatives along with address proof.

- E] The applicant shall not induce, threaten and pressurize any witnesses who are connected with the alleged crime.
- F] The applicant shall not leave the jurisdiction of the Akola District without prior permission of the Court.
- G] The trial Court shall not be influenced by the observation made by this Court as it is only for the purpose of bail consideration.

[URMILA JOSHI-PHALKE, J]