



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

39 BAIL APPLICATION NO. 1671 OF 2024

YUSUF DADA CHAUGULE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Shermale K. N.

APP for Respondent/State : Mr.S.B. Pulkundwar

Advocate for Respondent no.2 : Mr.Ajinkya A. Joshi h/f Mr.Natu S.V.

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CORAM : S. G. MEHARE, J.

DATE : 14th October, 2024.

P.C.:

1. Heard the learned counsel for the applicant. The learned counsel submitted the chargesheet.
2. Before arguments were opened, the learned APP and the learned counsel for the victim pointed that during pendency of this application, the chargesheet has been filed. Therefore, as per precedent, this matter could not be heard on merit and liberty is to be granted to the accused to apply before the first court. However, Mr.Shermale, the learned counsel for the applicant, as usual, opposed the submissions and argued that there is no bar to consider such application by this Court under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023. He would submit that there are exceptional circumstances to exercise the concurrent power by this Court without directing the applicant to approach the Sessions Court.
3. He has referred to various documents and argued at length. He

read the F.I.R. and the statements of Sarpanch and Upsarpanch of the village and argued that the applicant was appointed as a General Secretary of one political party. Hence, he has been arraigned as an accused in the present crime out of political rivalry. He would argue that when the report was lodged, a kidnapped victim was major. There is an inordinate delay in lodging the F.I.R. He would argue that when co-accused with victim were produced before the Superintendent of Police, Ahmednagar, she did not complain. However, both of them were sent to Khargaon Police Station, there also, she did not complain. After 17 days, she narrated the story as reflected in the F.I.R. He would also argue that the provisions of the POCSO Act would not attract because prima facie the victim was major. He also argued that the prosecution has no evidence of administering the poisonous or intoxicated substance. He also argued that the applicant is belonging to another religion than that of the victim. It has been tried to say that the incident has been tried to give a colour of love jihad. Infact, the applicant had no role to play in the crime. He has been arrested on 26.07.2004, on the same day of registering F.I.R. Reading various papers, he has tried to point that the applicant had played no role in the alleged incident. He would also submit that the victim married to another co-accused. She went there voluntarily. She never resisted the main accused. Therefore, considering these exceptional circumstances, this Court may exercise the powers under section 483

of the BNS.

4. In view of the concurrent jurisdiction of the High Courts and the Sessions Courts as per section 483 of the BNS, such application is maintainable. Various Courts and Tribunals have been established having some purpose. Such Courts and Tribunals must function and exercise powers first though the High Court has concurrent power. Such an application may be maintainable but may not be entertainable.

5. Perusal of the F.I.R. reveals that the applicant has played an active role. He seems to be an instrumental to cause the kidnapping of the victim. There are allegations against the applicant that he instigated the victim to love the main accused. He was also with them on the day of fleeing away. The statements of the Sarpanch and Upsarpanch of the village reveal that their statements are hear-say. Merely examining such witnesses is not sufficient to believe that out of political rivalry, the applicant has been falsely implicated in the crime. The statement of the victim is specific. Therefore, it must be read at this juncture. The accused has a right to raise defence of his choice. Why the victim did not allege against the accused, when she has produced before the Superintendent of Police and Khargaon Police Station is a matter of appreciation of the fact during the trial. In short, considering the papers and arguments advanced by the learned counsel for the applicant, this Court is of the view that there are no

exceptional circumstances to exercise the concurrent powers of the High Court to entertain bail application by keeping aside the precedent. This Court is of the view that in the facts and circumstances of this case, this application is not entertainable by this Court. Hence, this Court decline to entertain the bail application.

6. In view of the above, the bail application stands disposed of with a liberty to the applicant to approach the competent court seeking bail after filing the chargesheet, if he desires.

7. These observations are restricted to the present bail application.

(S.G. MEHARE, J.)

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