



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

CRIMINAL APPLICATION (ABA) NO.89 OF 2024

Bharat Bhauraoji Yenurkar
Vs.
The State of Maharashtra

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel a/b Mr. Sumit Joshi, Advocate for
applicant.
Mrs. M. A. Barabde, APP for respondent No.1/State.
Mr. Firdos Mirza, Advocate for informant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22/02/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.1606/2023 registered with Police Station, Hinghanghat, District Wardha, for the offence punishable under Sections 364-A, 385, 386 and 120-B read with Section 34 of the Indian Penal Code, the applicant approached to this Court for grant of pre-arrest bail.

2. The applicant is apprehending arrest at the hands of police, as accusation against the present applicant is on the basis of report lodged by Vikas Harinarayan Shahu, on an allegation that the informant, one Sonu Aarya and another are the partners and running the business of purchasing and selling the plots. There was a dispute between these three persons and Vikki Kotewar regarding the

removal of encroachment on one of the plots. On 19.12.2023, when the informant had been to the residence of Sonu, he found the motorcycle of Sonu and his spectacles in a broken condition. The informant and brother of Sonu called him and his phone was not reachable. They could not contact him on his phone and subsequently, they contacted him at about 11.00 p.m., at the relevant time, said Sonu informed them that he is along with his friend and was about to return at his residence. Finally, he returned at the house at about 12.30 p.m. and informed that he was forcefully taken by Ashif, Vikki and Rahmat to the forest area and they threatened to call the informant on the said spot. It is further revealed to him during the communication that they asked said Sonu to call the informant by saying that they were hired by the present applicant and the co-accused Vikki Kotewar for killing the informant. They have also demanded the amount of Rs.15,00,000/- and Sonu agreed to pay the amount of Rs.6,00,000/- to them. It is further alleged that these accused persons repeatedly called Sonu to demand the amount and finally said Sonu Aarya paid the amount Rs.1,00,000/- to the other co-accused on 22.12.2023. On 27.12.2023 at about 9.00 p.m., said Sonu again approached to the informant and informed that Ashif and Rahmat were calling him to pay the amount of Rs.5,00,000/- and threatened that on failure to pay the amount, they will kill the informant and, therefore, informant approached to the police and lodged the report. On

the basis of said report, police have registered the crime against the present applicant.

3. Mr. Anil Mardikar, learned Senior Counsel for the applicant submitted that as far as the present applicant is concerned, he is implicated in the alleged offence, merely because, his nephew has lodged the report against the informant and others. On the basis of which, Crime No.346/2022 was registered on 18.03.2022. He further submitted that as far as the role of the present applicant is concerned, which is only on the basis of the information given by the co-accused. There is no other material to show that the present applicant is involved in the conspiracy and he hatched the conspiracy to kidnap the informant and there is no connection between him and other co-accused. He further submitted that now, the main accused Vikki Kotewar is already released on bail by the learned trial Court. As investigation is completed, the incarceration of the present applicant is not required and, therefore, the applicant be protected by granting anticipatory bail.

4. Learned APP strongly opposed the application on the ground that not only the statement of the co-accused but the CDR report also shows the involvement of the present applicant in the alleged offence. His custodial interrogation is required for the investigation purpose. In view of that, the prayer for grant of anticipatory bail deserves to be rejected.

5. Heard learned Counsel Mr. Firdos Mirza for the informant, who has pointed out the earlier orders passed by the Division Bench in Criminal Writ Petition No.608/2023 [Bharat Bhauraoji Yenurkar Vs. State of Maharashtra through PSO, PS Hinganghat, Dist. Wardha and others] and submitted that the applicant has not approached this Court with clean hands. The custodial interrogation of the present applicant is required to ascertain the facts regarding his involvement and the role attributed to him. He further submitted that as far as the parameters for granting bail under Section 439 of Cr. P.C. and bail under Section 438 of Cr. P.C. are different. This is not the exceptional case, wherein the discretion can be used in favour of the present applicant. In view of that, the application deserves to be rejected.

6. Having heard the learned Counsel for the applicant, learned APP for the State and learned Counsel for the informant, perused the investigation papers. Considering the allegation in the FIR and the role of the present also is concerned, which reveals from the FIR is that when the Sonu Aarya was abducted by the co-accused, it revealed to the Sonu Aarya on the basis of statement made by the co-accused Ashif, Rahmat and Vikki Shahu that they were hired by the present applicant Vikki Kotewar to kill the informant by paying Rs.15,00,000/-. Besides this statement, the prosecution placed reliance on the CDR report. On perusal of the CDR report, it

reveals that the alleged incident of abducting is of dated 19.12.2023. The CDR report shows there was only one call between the present applicant and the co-accused Vikki Kotewar i.e. on 19.12.2023 at about 14:57:20. On perusal of the statement also the involvement of the present applicant regarding hatching of conspiracy did not revealed. Thus, only the statement of the co-accused, there is no other material to connect the present applicant with the alleged offence, at this stage, it reveals from the investigation papers. Considering the other co-accused is already released on bail and considering the role of the present applicant, the discretion can be used in favour of the present applicant, as present applicant has made out the case to grant him anticipatory bail. There is no dispute as to the fact that nephew of the present applicant has lodged the report against the informant. In view of that, the application for grant of anticipatory bail deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant **Bharat Bhauraoji Yenurkar** be released on anticipatory bail in connection with Crime No.1606/2023 registered with Police Station, Hinghanghat, District Wardha, for the offence punishable under Sections 364-A, 385, 386 and 120-B read with Section 34 of the Indian Penal Code, on executing PR bond in the sum

of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not leave the Wardha District without prior permission of the Court.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The applicant is disposed of.

(URMILA JOSHI-PHALKE, J.)