



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

CRIMINAL APPLICATION (ABA) NO. 113 OF 2024

Sangram @ Bittu s/o Rajkumar Singh Thakur
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Washim, District Washim

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 Advocate a/b Mr. Raheel Anwar J. Mirza,
Advocate for applicant.
Mr. D. V. Chauhan, Public Prosecutor along with Ms. H. N. Prabhu APP for
the respondent/State.
Mr. R. M. Daga, Advocate for the informant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/03/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.44/2024 registered with Police Station, Washim, District Washim for the offences punishable under Sections 307, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3 and 25 of the Arms Act, the present applicant approached this Court for grant of pre-arrest bail.

2. Piyush Mahendrasingh Thakur, who lodged the report, wherein it is alleged that the present applicant and three other co-accused persons when on the day of incident on 19.01.2024 the injured had been to the village due to his college holidays. Besides the house of the informant, his real cousin

uncle i.e. the present applicant Sangramsingh @ Bittu Chotelal Thakur is also residing with his family. There is a dispute between informant and the applicant regarding the ancestral property. Earlier also there was dispute between the parties regarding parking of vehicle on the open land and on account of dumping of dung.

3. On 22.01.2024 at about 5.30 p.m. in the evening, the informant and the injured Shivam along with the other boys preparing for the religious activity i.e. Aarti in the temple. At that time, the injured went to the house to bring some prasad. At that time the informant received a phone call of his mother, who disclosed that present applicant is creating nuisance in front of their house, therefore, the informant immediately rushed to his house and saw that applicant, another cousin brother Vishwajeet Thakur, the driver of the applicant namely Vishal Wathore and Vinod Khadse, quarreling with the father of the informant. His uncle Bhanupratap Singh and cousin brother Shivam were also present. At that time the applicant in a loud voice asked that he will dump the dung at the place and there is nobody who can restrain him, and he attempted to dump the dung at that open space, therefore, quarrel took place between them. At the relevant time, present applicant asked his cousin brother Vishwajeet to bring the pistol and accordingly, said Vishwajeet brought the said pistol from the house and handover

to the present applicant. At the relevant time, the informant came near to the present applicant to give him understanding not to quarrel, but the informant was threatened to face the dire consequences and warned him not to interfere and thereafter, he loaded the pistol. It is further alleged that the co-accused Vinod Khadse and Vishal Wathore caught hold the cousin brother of informant namely injured Shivam and thereafter, the present applicant fired the pistol towards Shivam and Shivam attempted to save himself from that fire, but the bullet hit the left thigh of Shivam and Shivam shouted loudly and fell down. He sustained the grievous injuries, thereafter the present applicant fled away from the spot of incident. On the basis of the said report, police have registered the crime against the present applicant.

4. Learned Senior Counsel Mr. Anil Mardikar for the applicant submitted that it was an accidental fire. After the incident, immediately the injured has given a statement on YouTube. The YouTube video shows that during the statement, the injured stated that accidentally the bullet was fired and he sustained the injury. He submitted that the present applicant is implicated merely because there is a previous dispute pending between the informant and the present applicant. The involvement of the present applicant due to the political rivalry also. After registration of the crime, when the application of the present applicant was pending, it was

attempted to declare him absconding and therefore, notice was issued under Section 82(1) of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C.'). He further submitted that the dates which are very relevant. The alleged incident has taken place on 22.01.2024 thereafter, the present applicant has approached before the Sessions Court for grant of anticipatory bail. The said anticipatory bail was rejected on 08.02.2024 thereafter, he filed the present application before this Court on 08.02.2024 itself and notice was issued on 12.02.2024, thereafter the investigating agency approached before the learned Magistrate and the learned Magistrate has issued the warrant under Section 70 of Cr. P.C. and thereafter, the proceedings for declaring the present applicant as absconding was initiated. He submitted that this entire activity is carried out by the investigating agency only to preclude the present applicant from getting the anticipatory bail. He further submitted that at this stage, the applicant is not declared as an absconding offender and therefore, the contention of the investigating agency that the application for grant of anticipatory bail cannot be considered is not sustainable.

5. He further submitted that in fact, the offence under Section 307 of the Indian Penal Code is not made out against the present applicant. The Court has to see the promptness of the investigating

agency and the activities carried out by the investigating agency. He submitted that even taking into consideration the allegation as it is and the statement of the injured which is given by him during the interview on YouTube Channel shows that the fire was accidental. Considering the same, the custodial interrogation of the present applicant is not required and he be released on pre-arrest bail. He submitted that as far as the criminal antecedents are concerned, the applicant is released on anticipatory bail in connection with Crime No.450/2023 registered under Sections 3, 4 and 25 of the Arms Act.

6. In support of his contention he placed reliance on the decisions of the Allahabad High Court in **Siddharth Kappor Vs. State of U.P. and another** in **Criminal Misc. Anticipatory Bail Application No.4040 of 2022 dated 20.07.2022** wherein the Allahabad High Court has considered and dealt with the Section 82 of the Cr. P.C. and held that:

“the law is trite on the point that if any person has filed any anticipatory bail application before the learned court below seeking anticipatory bail showing his reasonable apprehension of arrest in a case where the allegations of the prosecution prima facie do not corroborate with the material available on record and his anticipatory bail application is rejected, he has got a right to approach the High Court for such anticipatory bail and if in the interregnum period any proclamation u/s 82 & 83 Cr.P.C. is issued, it may be considered as a circumventive

exercise being taken by the Investigating Officer. No one can be restrained from taking legal recourse strictly in accordance with law and such legal right may not be prevented even if any process is adopted by any authority which is not permissible under the law.”

7. He further placed reliance on **Purushottam Chaudhary Vs. Central Bureau of Investigation through The Superintendent of Police Cbi/Acb Lko. in Application under Section 482 No.1974 of 2023 dated 27.02.2023**, wherein also the Section 82 and 83 of Cr. P.C. are discussed and it is observed that if the learned trial court is willing to issue proclamation u/s 82 and 83 Cr.P.C. against such accused persons, the degree of carefulness and precaution would be increased and such orders relating to the proclamation may be issued only on the application of the prosecution supported with an affidavit that despite all reasonable efforts being taken against the accused person to serve upon the summon the bailable warrant and N.B.W. he / she is avoiding the process, the court by assigning specific and cogent reasons to the effect that now there is no other way out except to initiate proceedings u/s 82 Cr.P.C. and 83 Cr.P.C. such proclamation can be issued but that proclamation cannot be issued in a cursory manner in view of the dictum of Apex Court in re: **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors., 2007 AIR SCW 6679.**

8. Learned Senior Counsel submitted that at present the applicant is not declared as an absconding accused. In view of Section 82(1) of Cr. P.C. only proceeding is initiated. He invited my attention towards Section 82 Sub-section (1) of Cr.P.C. and stated that in view of Sub-section (1) of Section 82 if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. He submitted that in view of Sub-section (4) of Section 82 where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

9. Thus, Section 307 of the Indian Penal Code is not included in Sub-section (4) and it is pertinent to note that only proceeding is initiated and the

present applicant is not declared as a proclaimed offender. He submitted that considering the statement of the injured during his interview on YouTube Channel, it is apparent that the firing was accidental and therefore, it is apparent that the present applicant is implicated maliciously and falsely in the alleged offence to fulfill the political agenda and prays for releasing the applicant on bail.

10. Learned Public Prosecutor Mr. Chauhan strongly opposed the application and submitted that the investigation is initiated and it is at a very initial stage. It is just the beginning of the investigation. This Court has to consider the scope of Section 438 of Cr. P.C. i.e. the parameters for grant of anticipatory bail. He submitted that the grant of regular bail under Section 439 and grant of anticipatory bail under Section 438 of Cr. P.C. are different. The power under Section 438 of Cr.P.C. being somewhat extra ordinary in character and should be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misused his liberty. He submitted that the FIR lodged by the informant is very exhaustive and a specific role is attributed to him. The intention and knowledge of the present applicant is apparent from the statement of the witnesses, which shows that with an intention to cause the grievous injury, the

applicant has asked his brother to bring the gun and the bullet was fired. At this stage, the investigation papers are to be looked into and not the video on YouTube. He submitted that *prima facie* offence is made out. The medical report of the injured shows that the injured was brought to the hospital in a very critical condition. Fortunately, he is survived from the injuries, otherwise, there was the threat of death. The statements of the various witnesses recorded during investigation shows the *prima facie* role of the present applicant. The Investigating Officer has also obtained the photographs of the injured which shows that the injured has sustained grievous injuries. He submitted that custodial interrogation of the present applicant is required, as pistol is to be recovered.

11. He also invited my attention towards the conduct of the present applicant and submitted that as far as the criminal antecedents are concerned, the present applicant has not made a statement in the application that there are criminal antecedents against him. First time, the bail order regarding the Crime No.450/2023 is brought on record, when the prosecution has pointed out that there are criminal antecedents. Thus, there is suppression of the facts on the part of the present applicant. The present applicant has also not made a statement that he has affiliated to any party and therefore, there is an agenda to implicate him falsely in the alleged offence. He submitted that without any contentions

these submissions are made and without any documents on record. It is submitted that due to the political rivalry, the present applicant is implicated in the alleged offence.

12. He submitted that considering the circumstances under which the alleged incident has taken place, the intention of the applicant can be gathered from the circumstances. The injury sustained by the present injured is of a serious nature. The custodial interrogation of the present applicant is required and therefore, application deserves to be rejected. He further submitted that considering the criminal antecedents the offence is registered against the present applicant under the provisions of the Arms Act and thus, he is having capacity and mental state to use the said arms, the application for grant of pre-arrest bail deserves to be rejected.

13. Learned Counsel Mr. Daga for the informant also reiterated the said contentions and invited my attention towards the recitals of the FIR and pointed out that the recitals of the FIR specifically shows that the applicant has asked his brother to bring the pistol which shows his intention to cause the injury and thereafter, that weapon is used. Considering the *prima facie* material against the present applicant and the parameters which are laid down by the Apex Court in various judgments,

the application for grant of anticipatory bail deserves to be rejected.

14. Having heard the learned Senior Counsel for the applicant, learned Public Prosecutor for the State and learned Counsel Mr. Daga for the informant, perused the investigation papers. The recitals of the FIR shows that the present applicant and the injured and the informant are related to each other. There is a previous dispute between them on account of the land as well as storing the cow dung in the open space. Previously, the quarrel took place between them. On the date of the incident, again the quarrel started on account of keeping the cow dung in the open space and during the scuffle present applicant asked his brother to bring the pistol and thereafter, the said pistol was loaded and the firing was done. It also appears from the recitals of the FIR that the said bullet hit on the thigh of the injured and thereafter, exit wound was found on his buttock. During the investigation, the Investigating Officer has collected the medical papers of the injured which shows that the injured was brought to the hospital in a critical condition. The Medico Legal Certificate issued by Icon Hospital shows that black powder mark from entry wound with bleeding in the said region 2.5 X 1 cm and exit wound is also 2 X 1 cm. It further shows that the injury sustained by the injured is critical in nature.

15. During the investigation, the Investigating Officer has recorded the various statements of the witnesses which substantiate the contention of the informant that there was a quarrel between the present applicant and the injured. The other family members and the present applicant asked his brother to bring the pistol from the house and thereafter bullet was fired. During the investigation, the Investigating Officer has also recorded the statement of the independent witnesses namely Ramesh Ramswami Nakle and others which also substantiate the contention of the injured as well as the informant that during the quarrel the pistol was asked to bring and thereafter, the bullet was fired.

16. Learned Counsel for the applicant vehemently submitted that the initiation of the proceeding under Section 82 of Cr.P.C. is only with an intention to deprive the present applicant from getting the anticipatory bail and therefore, he relied upon the YouTube video as well as two decisions of the Allahabad High Court. The video is produced before the Court for the perusal. It was heard in the open Court. On going through the video, it reveals that as far as the statement of the injured and the other witnesses to the extent of bringing the pistol from the house and its loading, the said statement during the YouTube video also supports the said contention. It is specifically stated in the said video by the injured that during the quarrel the applicant

asked his brother to bring the pistol, he was attempting to restrain the applicant from using the said pistol, and at that time, the bullet was fired. Therefore, the contention of the learned Senior Counsel for the applicant, during the scuffle it was accidentally fired, is not supported by the said statement during the YouTube video. As far as the initiation of the proceeding under Section 82 of Cr.P.C. is concerned, even accepting that the said proceeding is started only to deprive the present applicant from getting the anticipatory bail, the statements of the witnesses show the vital role played by the present applicant in the alleged incident. Even accepting the contention that the applicant is not declared as a proclaimed offender and by keeping it aside also the *prima facie* case is made out against the present applicant to show his involvement. As far as the political rivalry is concerned, nothing is on record to show that this applicant is implicated due to the political rivalry.

17. Learned Public Prosecutor and learned Counsel for the informant has rightly pointed out that the power under Section 438 of Cr.P.C. being somewhat extraordinary in character and should be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misused his liberty. It is well settled that

while considering the application for grant of bail and for grant of anticipatory bail the parameters are different. Section 438 of Cr.P.C. deals with the directions for grant of bail to person apprehending arrest. Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to this Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, the factors namely –

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

18. In view of the above legal provisions, the power exercisable under Section 438 of Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

19. In **Adri Dharan Das Vs. State of W. B. (2005) 4 SCC 303**. The Hon'ble Apex Court considered the scope of Section 438 of the Code as under:

"Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which an accusation against him in perusal of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or

unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed.”

20. In view of the above observation of the Hon’ble Apex Court and considering the facts of the present case, at this stage, the investigation papers from which the involvement of the present applicant, on the basis of the statements of various witnesses reveals the injury sustained by the injured is also of a serious nature. The custodial interrogation of the present applicant is required and therefore, the application deserves to be rejected. In view of that, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)