



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.771 OF 2024
(Suresh s/o Pohumal Chandani 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. A.S. Mardikar, Sr. Advocate a/b Mr. K. Pandey, Advocate for the applicant.
Mr. N.B. Jawade, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 14, 2024

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.993/2024 registered with Police Station M.I.D.C., Nagpur for the offence punishable under Sections 351(2), 3(5), 249, 238 and 103 of the Bharatiya Nyaya Sanhita, 2023.

2. The crime is registered on the basis of report lodged by Yogesh Ramchandra Mohite on an allegation that the son of the deceased namely Vijay gave a report on 18/10/2024 about his father not picking up the phone since 08/10/2024. On the basis of the same, missing report bearing No.184/2024 came to be registered on 18/10/2024. As the deceased has succumbed to the injuries caused to him A.D. No.128/2024 was registered under Section 194 of the Bharatiya Nagrik Suraksha Sanhita, 2023. During the enquiry it was found that the deceased had already died and since his name was given fake at the time of admission in the Government College and Hospital, Nagpur. So also his body was not claimed by

any of the relatives and it was cremated by the non-applicant. The photograph of the dead body was identified by the son of the deceased. After full-fledged enquiry it was found that only an assault was by the co-accused. As far as the present applicant is concerned it was alleged that the present applicant who is the owner of the company wherein the deceased was working as well as the co-accused was working wherein the incident of assault had taken place. The allegation against the present applicant is that to screen the offender from the punishment he assisted the co-accused to conceal his identity and asked the co-accused to file a report that deceased has died due to the accidental injuries. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Senior Counsel for the applicant invited my attention towards the recitals of the FIR and submitted that taking into consideration the recitals of the FIR as it is, there is no allegation that the present applicant was involved in the assault. Even there is no allegation that there was any instigation on the part of the present applicant or there was any enmity between the deceased and the present applicant. The allegation against the present applicant is that after the incident he along with his son arrived at the spot and asked the co-accused to admit the deceased in the hospital and also asked him to inform the police that he sustained the accidental injuries. Thus, the allegation against the present applicant

is only regards to the concealment of the incident as well as concealment of the assailant. He submitted that Sections 238 and 249 of the BNS are the bailable offences and the allegation against the present applicant is screening the offender from the legal punishment. Thus, considering the involvement of the present applicant is not in actual assault or he was not sharing any common intention with the co-accused as far as the assault is concerned. The offence punishable under Section 302 and 103 of the BNS, 2023 is not attracted against the present applicant. Thus, considering the fact that the involvement of the present applicant is in a bailable offence, he be released on bail in the event of his arrest. He submitted that co-accused Dharmesh Chandani is already released on anticipatory bail by the Sessions Court against whom the more serious allegations are levelled that he has assisted the co-accused by providing the another SIM card and by asking him to leave the city.

4. Learned APP strongly opposed the application and submitted that with intention to screen the original assailant, the present applicant has not only assisted the co-accused but has also caused to disappear the evidence by deleting the DVR recording.

5. He submitted that DVR recording when seized was found to be blank and said DVR was installed in the office of the present applicant and the other co-accused Dharmesh. He submitted that considering the

circumstances under which the alleged incident has taken place and thereafter it was the duty of the present applicant to hand over the co-accused to the police who is the assailant. He has attempted to screen the assailant from the punishment and also caused the disappearance of the evidence. In view of that, he is not entitled for any protection from this Court by using the discretion in his favour.

6. I have heard learned Senior Counsel for the applicant and learned APP for the State. Perused the entire investigation papers. Initially, the missing report was filed on the basis of the report filed by the son of the deceased. Admittedly, the legal heirs of the deceased are not informed by the present applicant who was the owner of the company and in whose company the deceased was serving. The recitals of the FIR and the investigation papers shows that the present applicant and the another co-accused arrived at the spot after the incident when the deceased was already lying in an injured condition. Instead of informing the police, the present applicant has asked the co-accused to take the deceased in the hospital and also asked him to give a false information that the deceased has sustained the injuries in an accident. The panchnama also shows that when the DVR was seized it was found to be blank. Thus, as far as the involvement of the present applicant in screening of the offender and disappearance of the evidence is concerned which is apparent from the investigation papers but as submitted

by the learned Senior Counsel all these offences which are attracted against the present applicant are bailable one, and therefore, he is entitled to be released on anticipatory bail in the event of his arrest as maximum punishment for the alleged offences is less than 7 years and there is no compliance by issuing notice under 35(3) of the BNSS, 2023 (Section 41A of the Cr.P.C.). In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of the arrest, the applicant - Suresh s/o Pohumal Chandani in connection with Crime No.993/2024 registered with Police Station M.I.D.C., Nagpur for the offence punishable under Sections 351(2), 3(5), 249, 238 and 103 of the Bharatiya Nyaya Sanhita, 2023, be released on anticipatory bail on executing P.R. bond of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station twice in a week i.e. on every Monday and Thursday between 10.00 AM and 1.00 PM and shall cooperate with the investigating agency.

(iv) The applicant shall cooperate with the investigating agency by providing the original DVR.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(vi) The applicant shall not leave the jurisdiction of the Nagpur District Court without prior permission of the Sessions Court, Nagpur.

(vii) The applicant shall surrender his passport if he is having before the investigating agency.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*