

Order below Exhibit 1 in Criminal Bail Application No. 85/2020
(Gangadhar and other Vs. State)
(Passed on : 05/05/2020)

Nature of the Application

1. This is an application filed by the applicants-Gangadhar Masarao Devkate and Vishal Bhagwanrao Mhaske (for short 'applicants') seeking anticipatory bail under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. 62/2020 registered at Aundha (Nagnath) Police Station under Sections 307, 353, 332, 323, 504, 143, 147, 148 read with 149 of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application

2. The applicants have contended that in the first information report (for short 'F.I.R.') it is alleged by the informant-Gajanan Gunjkar (for short 'informant') that he and other revenue official were discharging their duty as a public servant at village Murtijapur Sawangi, on 26/03/2020 at about 10.30 p.m. When they reached behind Zilla Parishad School ground, they saw a heap of six brass sand and six persons. They satisfied themselves that the said sand was brought in the red tractor, illegally. The other revenue official-Patil went to take custody of tractor. Whereupon, the person sitting on steering applicant-Gangadhar came near them. When asked he told that the tractor is owned by him and he had brought sand for own use. In the mean time, the other accused came there on three motorcycles and started abusing them and beat and assaulted other revenue official-Patil by bricks and stones. The applicants-Gangadhar and Vishal gave iron rod blow on his neck, back, thigh and ran away. Thus, the applicants and the other accused deterred him and other revenue

official from discharging their duty as public servant and hence C.R. No. 62/2020 is registered against them and other accused .

3. They are innocent and have not committed any offence. There is no evidence against them. The offence is registered with ulterior motive. They are not involved in the offence, as alleged by the informant. There is delay in lodging F.I.R.

4. Their custodial interrogation is not necessary. They are ready to co-operate with the police and will not tamper with the prosecution witnesses.

5. On these grounds the applicants have prayed to grant the application.

Contents in the Reply of the Investigating Officer

6. The investigating officer (for short 'I.O.') has filed reply through Additional public prosecutor (for short 'A.P.P.').

7. The I.O. has strongly objected the application. He has contended that the applicants have committed serious offence. There are absconding accused. It is transpired that the applicants have committed the offence with pre-plan. A terror is created in the vicinity due to offence committed by the applicants and other accused. The investigation is in progress.

8. If the application is granted, the applicants will tamper the evidence, will threaten the witnesses, will create hurdles in the investigation and it will become difficult to go to the root of the case.

9. On these grounds the I.O. has prayed to reject the application.

The Arguments

10. I have heard Shri. S. K. Dasare, A.P.P. for the prosecution, in extenso. Shri. A. S. Bangar, advocate for the applicants forwarded e-mail bearing inward No. 193/2020 dated 5th May, 2020 and informed that all the contents in the petition be treated as his argument.

11. They argued in consonance with the contentions in the application, say and referring the documents produced on record. In order to avoid repetition it is not necessary to note those arguments.

Points and Findings

12. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the applicants for granting the relief of bail, as prayed for ?	Yes
2)	What order ?	Application granted, As per final order.

Reasons as to Point Nos. 1 and 2

13. The F.I.R. clarifies that the applicants and other accused assaulted and threatened the informant and other revenue official, when they were on duty as public servant. The applicants with other accused was present on the spot of incident which is clear from his arrest.

14. No doubt, an offence under Section 307 of the I.P.C. is of

serious nature and to convict under this section it is not necessary to show that bodily injury capable of causing death was inflicted. But, in my view at the same time it is to be seen whether the act, irrespective of its result, was done with the intention or knowledge and circumstances mentioned in the section. In short the intention or knowledge of the applicants must be such as is necessary to constitute murder.

15. The prosecution has failed to produce on record the injury certificate of the injured, which give clear indication that the injured has not suffered any serious injuries so as to attract Section 307 of the I.P.C. Hence, considering all the facts and the intention gathered from all the circumstances it could be said that no case is made out under Section 307 of the I.P.C. against the applicants, prima-facie. Therefore, on this sole ground, the applicants is entitled for bail.

16. An offence under Section 353 of the I.P.C. is of serious nature and legality of the execution of duty is the sine qua non.

17. It is a fact that the applicants is charged with an offence under Section 353 of the I.P.C. which is of serious nature.

18. The ages of the applicants are 40 and 28 years. The substantial evidence has been already collected by the I.O. Most of the evidence is of the informant and other revenue official. There is no possibility of tampering with the evidence by the applicants. No question of any recovery from him is involved.

19. Moreover, in spite of spotting the tractor the informant or any other revenue officer who were alleged to be with him have failed to disclose the registration number of the tractor. Further, in spite of query the prosecution has failed to satisfy as to the basis relying on

which they are saying that the applicant-Gangadhar is the tractor owner. The non-mentioning of registration number itself give an indication that no incident as alleged by the informant has occurred, prima-facie and the story put-forward by him bear no ring of truth.

20. In a cognizable case, the earliest version as to the commission of an offence is reported to the police under Section 154 of the Cr.P.C. There should not be delay in reporting the occurrence to the police. It is intended to prevent embezzlement of truth, introduction of story-telling. Any unexplained delay will result in doubting the very F.I.R. and also the prosecution version of the case.

21. The incident is dated 26/03/2020 at about 10.30 p.m. Only on 27/03/2020 at about 20.01 hours the informant lodged report and C.R. No. 62/2020 was registered. The distance between the spot of incident and Aundha (Nagnath) police station is merely 20 kilometer. However, the informant took nearly 01 day to lodge the F.I.R.

22. The informant or the I.O. who investigated the case did not offer any explanation as to the delay of nearly 01 day. They are completely silent on this aspect. Thus, the F.I.R. in this case can not be held as free from doubt. The effect of this delay in lodging the F.I.R. as well as in conducting the investigation definitely creates serious doubt about the bonafides on the part of the informant and also the investigation agency in respect of filing of the complaint and its investigation. Therefore, the applicants is entitled for anticipatory bail.

23. I am unable to persuade myself with the arguments advanced by Shri. Dasare, A.P.P. for the prosecution that if applicants are released on bail they will create law and order problem by attacking the informant and hence their application is liable to be

rejected. The reasons are :-

- That the applicants are permanent resident of Sawangi.
- That the applicants will not involve themselves in any criminal activity if stringent conditions are imposed.
- That considering my discussion, supra.

24. It is well settled that the extraordinary provision of anticipatory bail under Section 438 of the Code of Criminal Procedure is meant for saving the innocent person from unnecessary arrest and detention and in this provision cannot be used for a person, who prima facie, is involved criminal activities.

25. To sum up, the offence with which the applicants are charged though is of serious nature there is no prima-facie evidence to hold their involvement in committing said offence. If the application is granted it will not hamper the investigation. The applicants have permanent place of residence and there is no possibility of committing similar type of offence by them. The custodial interrogation of the applicants is not necessary as Sections 307 and 353 of the I.P.C. are not attracted, prima-facie. If that be so, the contention of the applicants that they are innocent and are falsely implicated in the crime, prima-facie can be accepted. However, considering the nature of offence and in order to lessen the intensity of the apprehension expressed by I.O. in his report, I am of the firm view that the applicants are entitled to the grant of anticipatory bail pending investigation on stringent conditions.

26. It is made clear that the observations made in this order are made for the limited purpose of this application only and shall not have any effect on the merits of the case under investigation and all parties are at liberty to agitate their respective cases at the time of

inquiry or trial in the case under investigation on merit without being prejudiced even in the least by any of the observations made in this order.

27. Further in view of lock down period and the limited number of staff working it is necessary to direct specifically to act on the digitally signed copy of the order.

28. Accordingly, I answer point No.1 in the affirmative and point No. 2 as application granted, as per final order.

29. In the result, following order :-

OPERATIVE ORDER

1.	The application is granted.						
2.	The applicants-Gangadhar Masarao Devkate and Vishal Bhagwanrao Mhaske, in the event of their arrest in Crime Register No. 62/2020 registered at Aundha Nagnath Police Station, be released on anticipatory bail on his furnishing a personal bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand only) each, with one surety in the like amount, on the following conditions :- <table border="1"> <tr> <td>(i)</td><td>The applicants shall make themselves available for interrogation by the police as and when required under written intimation to that effect.</td></tr> <tr> <td>(ii)</td><td>The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.</td></tr> <tr> <td>(iii)</td><td>The applicants shall not tamper with the prosecution evidence by intimidating the witnesses in any manner.</td></tr> </table>	(i)	The applicants shall make themselves available for interrogation by the police as and when required under written intimation to that effect.	(ii)	The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.	(iii)	The applicants shall not tamper with the prosecution evidence by intimidating the witnesses in any manner.
(i)	The applicants shall make themselves available for interrogation by the police as and when required under written intimation to that effect.						
(ii)	The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.						
(iii)	The applicants shall not tamper with the prosecution evidence by intimidating the witnesses in any manner.						

	(iv)	The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.
	(vi)	That the applicants are directed to attend Aundha (Nagnath) police station on every Friday of the week in between 2.00 p.m, to 4.00 p.m after closer of the lock-down.
2.	The prosecution is at liberty to seek cancellation of bail in case of violation of any of the conditions imposed.	
3.	The concerned police station be informed, accordingly.	
4.	The police papers be returned.	
5.	The parties are at liberty to act on the digitally signed copy of the order.	

(Pronounced in Open Court).

Date : 05/05/2020.

(M.B.Lambe),
Additional Sessions Judge,
Basmathnagar.