

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 611 OF 2015

Kashinath Bhai Patil. ... Applicant.
Versus
The Sr. Inspector of Police & anr. ... Respondents.

Mr. Rizwan Merchant a/w. Mr. Swapnil Wagh i/b. Rizwan Merchant
& Associates, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

Mr. A.D. Shinde, PSI, Wangaon Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 17, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the Learned
APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is apprehending his arrest in
Crime No. 43 of 2014 registered at Wangaon Police Station for

offence punishable under Section 302, 396, 395, 120B, 143, 147, 148, 149, 504, 506 of the Indian Penal Code.

3 It is the case of the prosecution that on 31st October, 2014 the complainant who happens to be father of deceased Mayur Chaudhari lodged a report alleging therein that his son Mayur had been assaulted by Manoj Tandel at Dhapsi Vadadepada. They had a bungalow and another house. They own 10 to 12 acres of land and are cultivating chickoos, coconuts, Mangoes etc. According to the complainant, his wife had decided to purchase survey No. 84, 83, 86 from Shailesh Govari, Dattu Vajya Umtol and one Kindra and had also obtained registered Power of Attorney. There was dispute over the said land between Manoj Patil and Jagdish Vajya Tandel, Parshu Vajya Tandel. There were quarrels between both the families. Accused persons had also threatened them earlier. They had initiated prosecution against the complainant and his son due to which he and his son were in jail for 10 months. Wife of the complainant had got pre-arrest bail in the said case.

4 As far as the incident is concerned, the complainant has alleged that on 31st October, 2014 at about 8 a.m. he alongwith his daughter Madhuri and manager Suresh had been to their agricultural land known as Wadi. They had asked Shailesh Govari to get the weeds cleaned from the said agricultural land and thereafter, he had left the wadi alongwith his daughter Madhuri. At about 12 noon accused persons Manoj Patil, present applicant and other 21 others had been to the said land and had threatened the manager that they shall not return to the said land. At that time, Mayur had left the plot on his motor cycle. It is alleged that the accused persons were concealing themselves behind trees. When Mayur returned, they mounted assault on him with deadly weapons like sickle, sticks etc. It is alleged that the accused persons had caused homicidal death of his son Mayur.

5 The present applicant had learnt that he is being falsely implicated in the said case at the behest of the complainant and therefore, on 4/11/2014 he had made a representation to the PI of Vangaon Police Station informing him that on 31st October, 2014 at about 12 noon, he had been to village Chinchani, Dandepada for 12th

day ceremony of Janabai Dandekar. He had given names of the persons who were in his company at the relevant time. He had informed the investigating officer about the tower location and had given his cell phone number to the investigating officer. Alongwith the representation, he had given affidavits of 3 persons, who had seen him at Chinchani Paada at the relevant time.

6 It is pertinent to note that there was no investigation in respect of the same. Investigation was completed and charge-sheet was filed against the accused who were arrested. The applicant had then apprehended arrest and has filed an application seeking pre-arrest bail which was rejected and hence, he has approached this Court.

7 By an order dated 7th May, 2015, this Court (Coram : Revati Mohite Dere, J) had directed the investigating officer not to arrest the applicant till 9/6/2015 and that the the applicant was directed to attend Wangaon Police Station on every alternate day from 11 a.m. to 1 p.m. The interim relief was continued from time to time. This Court had observed that the Investigating Officer has glossed over the

information given by the present applicant voluntarily on 4th November, 2014. The applicant had also given the reason for false implication. According to the applicant, he is a witness in Sessions Case No. 89 of 2013. The applicant is an eye witness. The complainant is being prosecuted. The complainant was in custody for about 10 months. The complainant had held the applicant responsible for his prosecution and he has been falsely implicated.

8 Upon perusal of the statement of the eye witnesses, it is clear that specific role and weapons have been attributed to the principal accused who had mounted assault upon the deceased. This incident is divided in two parts. In the first incident, the presence of the applicant is shown alongwith other accused wherein threat was given for not entering into the said dispute land. Thereafter, the second incident indicates that the assault upon the deceased wherein no role is attributed to the present applicant nor it is stated that the applicant had accompanied other assailants or that he had concealed himself behind trees. In view of this, the applicant who happens to be a teacher who had taken voluntary retirement, deserves pre-arrest bail.

9 The learned APP has filed affidavit indicating therein that the distance between Chinchnipada to Dhapsi Vadadepada is hardly 7 km. and that it was possible for the applicant to travel the same within a short time and take a defence of Albee. In any case, the plea of albee cannot be considered at the stage of pre-arrest bail and would be a matter of evidence to be adduced by the prosecution and especially by the accused at the time of trial.

10 Taking into consideration the background of the case and the role attributed to the applicant, the applicant deserves grant of bail.

11 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits in accordance with law.

12 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or two sureties in the like amount.
 - (iii) The applicant shall report to the concerned police station on 4 consecutive Sundays commencing from 26/7/2015 and thereafter, shall report to the concerned police station on 1st Sunday of each month till conclusion of the trial.
- 13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)