

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAILAPPLICATION NO. 695 OF 2014
WITH
CRIMINAL APPLICATION NO. 537 OF 2014

Nitin Raghunath Kavitate	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

WITH
CRIMINAL APPLICATION NO. 537 OF 2014

Tukaram Umaji Danane	...	Intervener/complainant.
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In the matter between:
Nitin Raghunath Kavitate ... Applicant
vs.
The State of Maharashtra ... Respondent
Mr. Vishwajeet Sawant a/w Mr. Prabhakar M. Jadhav, Advocate for the applicant
Ms. Vira Shinde, APP, for the respondent-State.
Mr. Karansing Rajput i/b. Mr. Satish S. Raut for the Intervener.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 2nd March, 2015.

P.C.

Heard. This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No.78 of 2014 registered at Natepute Police Station for the offence punishable under Sections 302, 120B, 201 read with Section 34 of Indian Penal Code and Section 3(1)(ix) (x) of the Scheduled castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of the Protection of Civil Rights Act.

2. It is the case of the prosecution that on 15.5.2014, Tukaram Danane filed an application before the API of Natepute Police Station stating therein that he belongs to Hindu Mang Caste. His son Sanjay Tukaram Danane was working as a peon in Chandrakant Ghogardare School at Natepute. He had made several representations for promotion and other ancillary benefits. That in the intervening night, on 14.5.2014, the members of the Management Committee and other anti-social elements had caused homicidal death of his son Sanjay and had hanged him in the playground of the School. On 15.5.2014, the detailed statement of Tukaram Danane was recorded. He has specifically alleged that his son Sanjay was being discriminated by the Management Committee on the ground of his caste. He was not being given due promotion. He had made several representations to the Education Officer after he had realized that his proposal was not sent to the Education Officer. That his son had also taken recourse to going on hunger strike for not receiving the benefits. On 29.1.2014, his son had also lodged a report against the Management. According to the complainant, the members of the Management Committee through other persons had kept a watch on the movements of his son. His son had actually seen

unknown people following him. On 12.5.2014, Sanjay and Ambadas Shinde had also lodged a report before the Superintendent of Police. He had also given the number of the vehicle which was following him. He had also written a chit that in the eventuality that something goes wrong with him, the members of the Management Committee should be held responsible. On 15.11.20123, at the behest of Sanjay Crime No.25 of 2013 was registered against the members of the Management Committee and they were annoyed by the same. The complainant has further alleged that there was a specif threat to the life of his son wherein the members of the Management committee had threatened that the death of Sanjay would terminate the dispute between him and the Management Committee.

3. The body of Sanjay was sent for post-mortem. The post-mortem notes would indicate that the deceased had a ligature mark present round the neck. Hyoid bone intact. Thyroid cartilage is also intact. Column No.19 indicates that the deceased had underscalp hematoma present on right side size 9 cm. x. 6 cm. Red. There was no fracture. Meninges and brain found to be congested. The cause of death was shown as hanging. This Court had called for the report from the Medical Board and it is confirmed that it is a case of hanging. However, at this stage, it cannot be concluded that the deceased had died because of hanging only on the basis of the report before the Court.

4. Perused the report filed by the learned APP. This Court cannot be oblivious of the fact that the present applicant is prosecuted in Crime No.33 of 2011 and No.95 of 2008 for the offences punishable under Sections 302 and 201 of IPC. The modus operandi appears to be similar in all three cases.

5. The learned counsel for the applicant submits that the applicant has been acquitted in Crime No.33 of 2011. However, the proceedings in Crime No.95 of 2008 are pending before the Sessions Court. The learned APP submits that on this very ground, in fact, the applicant does not deserve pre-arrest bail.

6. The learned counsel for the complainant submits that in the present case, there would be an embargo in granting pre-arrest bail in view of Section 18 of the Special Act.

7. As against this, the learned counsel for the applicant submits that in the facts of the present case, the said bar would not operate as there is no allegation that the deceased had been eliminated only because he belongs to a particular caste. Be that as it may, it is pertinent to note that seven co-accused in the present case i.e. in Crime No.78 of 2014 were arrested on 15.5.2014. They were remanded to judicial custody on 19.5.2014. By an order dated 21.6.2014, the Addl. Sessions Judge, Malshiras, has been pleased to grant them bail under

Section 439 of Cr.P.C. In the present case, there is no special reason as to why the present applicant should be granted pre-arrest bail and should not be subjected to custodial interrogation. The learned counsel for the applicant has submitted that since May 2014, the applicant was on pre-arrest bail. He has co-operated with the investigating agency to the best of his capacity. That no overt act is attributed to the present applicant. That there are inherent lacunas. However, this Court is of the opinion that in a serious case like this, those issues should be considered at the time of trial and would attain finality only upon recording of substantive evidence.

8. Relief under Section 438 of Cr.P.C. is discretionary in nature. Taking into consideration the fact that the applicant has been prosecuted on two occasions for serious offence like sections 302, 201 of IPC and prima facie the modus operandi appears to be the same in all three cases, including the present one, this Court is not inclined to confirm the interim relief granted in favour of the applicant vide order dated 2.6.2014 passed by the Vacation Bench of this Court.

9. The application being sans merits, stands rejected.

10. The oral prayer for extending the interim relief for a period of four

weeks from today is hereby rejected.

11. The Intervention Application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)