

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
ANTICIPATORY BAIL APPLICATION NO.1522 OF 2014

Jayendra @ Papal Kisan Dubala ... Applicant

Vs

The State of Maharashtra ... Respondent

Mr. C.K. Tripathi for the Applicant.

Mrs. A.A. Mane, APP, for the Respondent-State.

CORAM: P.D. KODE, J.

DATED: FEBRUARY 12, 2015.

PC:

Not on board. Upon mentioning, taken up on production board.

2. Heard. For the reasons recorded in the order dated 14.1.2015, interim direction in terms of section 438 of Cr.P.C. was granted in favour of the Applicant in connection with Crime No.43 of 2014, registered with Wangaon Police Station for offences under sections 120B, 302, 395, 396, 143, 147, 148, 149, 504 and 506 of the IPC, etc.. A perusal of the order reveals that the same was passed before issuing notice to the other side in view of the contention taken that on the date and time of the alleged incident the Applicant was not at the spot of the incident and was at some

other place. It was then contended that the Applicant was having a CCTV Footage about it. Having regard to such a contention, the Applicant was protected and he was directed to furnish said CCTV Footage to the I.O. The report filed by the prosecution reveals that the Applicant is not seen in said CCTV Footage furnished by him.

3. Thereafter, the learned counsel for the Applicant has submitted to give him one more chance to show the CCTV Footage with the assistance of his expert. Accordingly, same has been seen by the investigating agency and further report is filed. The said report is tendered in the Court and marked 'X' for identification. The said report also reveals that the investigating agency was not able to make out presence of the Applicant in said CCTV Footage. Needless to add that the same destroys the foundation upon which the interim order was based. Mr. C.K. Tripathi, learned counsel for the Applicant has submitted that he wants to tender an affidavit of his expert to the effect that presence of Applicant is borne from the said CCTV Footage.

4. It is difficult to accept that such a submission can be entertained at this stage. As a matter of fact, for serving the ends of justice, a chance was given to the Applicant to show the CCTV Footage to the I.O.. Said factor could have been taken into

consideration while considering the prayer for pre-arrest bail. Needless to add, the provisions of criminal procedure code gives right to I.O. to file the report as a result of investigation effected by him. The report, which was filed today, prima facie reveals that according to the I.O. said stands taken by the Applicant is unsustainable.

5. Having regard to it and since the papers of investigation reveals that presence of the Applicant at the time of incident and his participation in the incident are prima facie borne from the matters stated in the FIR and the statement of three eye-witnesses, it is difficult to sustain the prayer for pre-arrest bail in offences of such a serious nature in which one person has lost his life. Mr. Tripathi, learned counsel for the Applicant with all sincerity at his command tried to submit that the Applicant has been falsely implicated due to himself being a member of the "Adivasi Ekta Parishad". Without going into the said aspect, it can be safely said that merely because he is a member of such a Parishad, a conclusion cannot be jumped to that he is falsely implicated in said case and that, too, in the light of existence of tangible material collected during the course of investigation showing his involvement. Resultantly, there are no merits in the

application for pre-arrest bail. The application stands rejected.

6. After passing of the order, learned counsel for the Applicant requested for continuing interim protection on the count of challenging this order before the Apex Court. Considering the nature of the offences of which the Applicant is accused, such a prayer cannot be entertained as it would effect throttling the investigation in a serious crime at the early stage. Request stands refused.

(P.D. KODE, J.)