

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.39 OF 2015

Shri Jalinder Kisan Shinde ... Applicant

Vs.

The State of Maharashtra & Ors. ... Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.1535 OF 2014**

Shri Kunal Dashrath Landge ... Applicant

Vs.

The State of Maharashtra & Ors. ... Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.52 OF 2015**

Vishal Vasantrao Tingre ... Applicant

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr.Subhash Jha i/b Mr.Subhash Hulyalkar for the Applicants in
ABA/39/2015 and ABA/1535/2014

Mr.M.S. Mohite i/b Mr.Subhash Hulyalkar for Applicant in ABA/52/2015

Mr.Arfa Sait, APP, for Respondent – State in ABA/39/2015 and
ABA/52/2015

Mr.D.P. Adsule, APP, for State in ABA/1535/2014

Mr.H.B.Khopade, API, Dehu Road polic station, Pune (Rural) - present

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: MARCH 17, 2014

P.C.:

1. These three applications for pre-arrest bail are moved under section 438 of the Criminal Procedure Code as the applicants/accused are facing charges of murder and conspiracy in C.R. No.119 of 2014, registered at Dehu Road police station, Pune (Rural), Pune. Two bail applications viz., Anticipatory Bail Application Nos.39 of 2015 (Jalinder Shinde) and 52 of 2015 (Vishal Tingre), are second bail applications as their first applications for pre-arrest bail were rejected by this Court on 1.7.2014 and 18.9.2014 respectively. The third bail application No.1535 of 2014 of Shri Kunal Landge is a first application for pre-arrest bail. However, his interim bail application was rejected by this Court on 6.8.2014, as his main application was to be decided by the Sessions Court on 24.8.2014. Then, the main application was decided by the Sessions Court and rejected. Thereafter, he filed Anticipatory Bail Application No.1397 of 2014 which was withdrawn on 5.11.2014.

2. On 21.5.2014, in a hotel, namely, Hotel Shivneri at Dehu Road, Pune, all these applicants/accused alongwith the co-accused had dinner. At that time, they all were drunk. They picked up quarrel with the manager of the hotel, one Vinayak Shinde, and the waiter of the said hotel on

account of payment of bill. They all assaulted the manager Vinayak Shinde. The applicant/accused Jalinder Shinde is an ex-Corporator and an influential person. It is the case of the prosecution that thereafter on 23.5.2014, some unknown persons arrived at the hotel on a motor cycle and Vinayak Shinde was shot dead. The incident was witnessed by some persons. It is the case of the prosecution that the assailants were hired on a contract killing by the applicant/accused No.1 and accused No.10 - Pradip Pawar and all the applicants/accused alongwith two principal accused hatched conspiracy to kill Vinayak Shinde as the 'honour' of Jalinder Shinde was hurt / offended / outraged / humiliated.

3. Mr.Jha, the learned Counsel appearing for the applicants/accused Jalinder Shinde and Kunal Landge, has submitted that the entire case of the prosecution stands on one star witness, namely, one Mr.Satish Nalawade. Now the police have filed chargesheet. Thus, the applicants/accused were granted protection by way of interim bail in December, 2014 in the present second application for pre-arrest bail of Jalinder Shinde and the first Anticipatory Bail Application of Kunal Landge and since then, they are attending the police station and cooperating the police. The learned Counsel has, therefore, submitted that the said interim order be confirmed. He submitted that the witness Satish Nalawade, who has stated about the alleged conspiracy, has withdrawn

his statement and his letter to the Commissioner of Police, by specifically informing that he was pressurised by the police to give such statement otherwise he would be falsely implicated in a criminal case. He submitted that the applicants/accused have filed a Writ Petition for quashing before the Division Bench which is pending. In the said Writ Petition, notice was issued to Mr.Nalawade, who has filed an affidavit reiterating that his statement was forcibly obtained and that he has signed on two pages of the statement and he did not sign on one page of his statement recorded under section 161 of the Criminal Procedure Code. The learned Counsel argued that the police should not have obtained signatures of the witness on a statement recorded under section 161 of the Criminal Procedure Code. This shows that the statement is deliberate and concocted. That statement is shrouded with doubts and should to be discarded even at the stage of deciding the application for anticipatory bail. Mr.Jha further submitted that this Court has granted anticipatory bail on 27.6.2014 to the principal accused Pradip Pawar. Therefore, on the principle of parity also, he prays for bail to the applicants/accused. He submitted that Pradip Pawar was the main culprit, who has decided to kill the person, who humiliated his best friend Jalinder Shinde.

4. Mr.Mohite, the learned Counsel appearing for the applicant/accused in Anticipatory Bail Application No.52 of 2015, submitted that though this is

a second application for pre-arrest bail by the applicant/accused Vishal Tingre, it is preferred after filing of chargesheet and it is a changed circumstance. He adopted the submissions of Mr.Jha on the point of statement of the witness Mr.Satish Nalawade that it is withdrawn and it is doubtful and cannot be relied and there is no evidence against the applicant/accused. He also pointed out a statement of another witness by name Vishwakarma. He gave a different version in respect of the conspiracy and killing of Vinayak Shinde. He submitted that from the statement of Vishwakarma, it appears that at the time of the conspiracy, the applicant/accused Vishal Tingre was not present and Vinayak Shinde was killed at the instance of the co-accused Pradip Pawar and, therefore, it is not to be presumed that though Vishal Tingre was present at the time of altercation and assault on the previous day, he was involved in the conspiracy of murdering Vinayak Shinde.

5. Both the learned Prosecutors while opposing the applications for pre-arrest bail, pointed out that this is not a case where the applicants/accused are to be protected by granting pre-arrest bail. The learned Prosecutors submitted that in the criminal applications filed by Narendra Bhoir and Kunal Landge, the Division Bench did not accept the submissions of the learned Counsel for the applicants that there is no sufficient material on record to show the involvement of the applicants.

The learned Counsel has submitted that the statement of Mr.Nalawade was on record in the application No.952 of 2014 which was filed by Jalinder Shinde, However, the said application was withdrawn on 20.1.2015 and, therefore, the said affidavit of Mr.Nalawade has also gone. The learned Prosecutor submits that there is no ground for the applicant/accused to move the second bail application.

6. As stated earlier, the two applicants/accused have moved the second Anticipatory Bail Applications before this Court. Both the applications were rejected by this Court on merits. The statement of Mr.Satish Nalawade on the point of conspiracy is a part of the chargesheet. Though as per the submissions of the defence, the same has been withdrawn by the said witness by sending a letter to the Commissioner of Police, it is a matter of scrutiny for the trial Court. It is painful to record that this Court has passed the order dated 1.7.2014 and as per the record, the second application was moved before this Court by Jalinder Shinde on 29.10.2014. In that application, interim relief was granted on 31.10.2014. Thus, it shows that there was no protection given to these accused persons after rejection of their bail from July, 2014 till 31.10.2014. The application for anticipatory bail of the applicant/accused Vishal Tingre was rejected on 18.9.2014. Thus, it shows that Vishal Tingre was without protection from 18.9.2014 till 31.10.2014. It is to be noted

that at the time of rejection of the Anticipatory Bail Application of Jalinder Shinde, the defence Counsel sought stay to the said order because they wanted to approach the hon'ble Supreme Court. It was rejected by this Court. However, they did not approach the hon'ble Supreme Court. I fail to understand as to why the Investigating Officer could not arrest these accused when they were badly wanted in the case of the murder. It is difficult to believe that when this Court has rejected the application for anticipatory bail, the police are unable to find out these accused for months together and the applicant/accused went on filing applications before this Court. The learned Prosecutor has pointed out that in the order of interim bail granted by this Court, there is no mention of the order passed by this Court rejecting the first Anticipatory Bail Application but, there is a mention of rejection of the first anticipatory bail by the Sessions Court only. It is clarified by both the learned Counsel for the applicants/accused that in the body of these applications, the fact that these are the second applications is expressly mentioned and, therefore, the applicants have not suppressed these facts. Though in the body of the applications, the said fact is mentioned, it appears that this fact is not pointed out to the hon'ble Judge that this is a second bail application and the first bail applications were rejected. Otherwise, my learned predecessor would not have missed this important fact. When the applicants/accused are out, withdrawal of the statement by the star

witness, is itself doubtful. The manner in which the murder has taken place is brutal and prima facie, it appears that the applicant/accused Jalinder Shinde and co-accused Pradip Pawar were successful in creating terror in that locality. It needs to be clarified specifically when bail to accused No.10 Pradip Pawar was granted on 27.6.2014 by me, the statement of Mr.Satish Nalawade was not before the Court. The statement was recorded on 1.8.2014. I have no hesitation to mention that if the said statement would have been placed before this Court, the application would have been appreciated in a different manner. Therefore, there is no question of parity.

7. The submissions of Mr.Mohite that a person may be present at the time of previous quarrel, not necessarily be involved in the conspiracy, would have been accepted if there would have been only a statement of Shri Vishwakarma and not the statement of Shri Satish Nalawade. Whether any witness was pressurised either by the police or the accused, is a matter of evidence and assessment of the learned Sessions Judge. However, at this stage, there is no ground to entertain the these second Anticipatory Bail Applications so also the second Anticipatory Bail Application filed by the applicant/accused Kunal Landge. There is no change of circumstance. Hence, all the Anticipatory Bail Applications are dismissed.

8. In this matter, it is pointed out by the learned Prosecutor and I think it is worth to note that the applicant/accused Kunal Landge filed Anticipatory Bail Application No.1028 of 2014 through a lawyer Mr.Subhash Hulyalkar and B.V. Salunkhe challenging the rejection of interim order of the Sessions Court. This Court refused to grant interim relief as the matter was fixed in the Sessions Court on 22.8.2014. Thereafter, on 5.11.2014, Anticipatory Bail Application No.1397 of 2014 was filed by the applicant/accused Kunal Landge through Mr.S.C. Halli i/b Mr.Subhash Hulyalkar. The said application was heard and it was allowed to be withdrawn to take appropriate proceedings in accordance with law on 5.11.2014. Thereafter, another Application No.1106 of 2014 was filed by applicant/accused Kunal Landge wherein it was contended that though the trial Court rejected the interim application, it had kept the main application pending and therefore, this Court gave directions to the trial Court to decide the said Anticipatory Bail Application No.353 of 2014 on or before 21.11.2014 and interim protection was given to the accused. I am shocked to see that the concerned lawyers have suppressed the fact from the Court that this Court has rejected the interim relief to the said accused by its order dated 6.8.2014. There is no reference to the order of this Court. I found it necessary to mention that the lawyer Mr.Subhash Hulyalkar has appeared throughout in this matter and has suppressed this

important fact from the Court with a view to snatch the order from the Court. Such practice of the lawyers is to be deprecated.

9. The Superintendent of Police, Pune (Rural) should give proper directions to the concerned police who are investigating the matter as to these accused are not traceable to the police and go on filing applications for anticipatory bail in the Courts.

10. The Anticipatory Bail Applications are accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)