IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 473 OF 2016

Ramesh @ Rameshanna Sidramappa Patil ... Applicant
Vs.
The State of Maharashtra … Respondent

Mr. Mahesh Jethmalani, Senior Counsel a/w. Ms. Chaitra Pawar i/b. Mr. Ritesh Thobde, Advocate, for the applicant.
Ms. Veera Shinde, APP, for the State.
Mr. Jitendra Kadam, P.I. CID Flying Squad, Pune, present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 28th September, 2016.

P.C.

1. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.160 of 2014 registered at Valsang Police Station, Dist. Solapur, for the offences punishable under Sections 302, 307, 201, 120-B read with Section 34 of the Indian Penal Code.

2. The background of the case is that the elections to the State Legislative Assembly were to be held on 15.10.2014. The father of the present applicant was contesting the elections from South Solapur

Constituency. He was a sitting M.L.A. One Gurunath Jagdev Katare was a member of the Kumbhari Panchayat Samiti. He was associated with the National Congress Party (NCP). He was denied the ticket from the said Party. he had filled in a Form as an Independent Candidate. The father of the present applicant and Gurunath Katare had been together to withdraw the form of Gurunath Katare as there was a deemed understanding between both the candidates that Gurunath Katare would support the father of the present applicant and campaign for the Bharatiya Janata Party (hereinafter referred to as the BJP). That the contesting candidate was from National Congress Party.

3. It is the case of the prosecution that the complainant that Shivling Shankar Parshetti lodged a report at the Valsang Police Station on 13.10.2014 at about 23.45 (11.45 p.m.) alleging therein that on 13.10.2014 at about 10 p.m., he along with one Gurnath Katare was proceeding on a Activa Scooter towards the house of the said Gurunath. One Nabilal Shaikh was along with him on a motor-cycle and was driving just behind them. He was also a supporter of the father of the present applicant. When they were proceeding from the Service Road near Macharla Mill, one unknown person who had muffled his face, intercepted them and mounted

assault upon them. In an attempt of rescuing themselves, the Scooter had slipped and the first informant and Gurunath Katare had fallen on the ground. That in fact there were assailants who were armed with deadly weapons. Being frightened, the first informant escaped from the spot. He had also seen Nabilal Shaikh being assaulted. The first informant rushed towards the house of Gurunath and informed his wife. Thereafter, the first informant accompanied with Akash son of Gurunath rushed to the spot only to see that Gurunath was lying in a pool of blood. The injured was taken to the hospital at Solapur where he was declared dead. Crime No.160 of 2014 was registered against the three unknown persons.

4. It is pertinent to note that the statement of Nabilal Shaikh was recorded on 14.10.2014. On 17.10.2014, the supplementary statement of the first informant was recorded in which he had given various reasons or motive by unknown people for causing homicidal death of Gurunath. All this was only to mislead the investigating agency to probe the possible motive on part of anybody including Nabilal Shaikh for causing homicidal death of Gurunath. However, it is a matter of record that the first informant as well as Nabilal Shaikh had sustained grievous injuries which could have been sufficient causing their homicidal death. The investigating agency

was investigating the case from all directions. On 22.11.2014, one Sharad Mahanand Shinde was arrested on suspicion.

5. It appears from the papers of investigation that he had given a direction to the investigating agncy for proper investigation. On 12.2014, the accused Pramod @ Kingbhai, Prakash Swamy and Jagdish @ Pinto Ratnakar Konehrikar, Pradip @ Deepak Mathpati were arrested. They were interrogated. The case diary dated 6.12.2014 and 7.12.2014 would indicate that all the three accused were interrogated independently. They reiterated the history as narrated by them in the second Remand Yadi and had candidly stated that they have been hired by **Ramesh Anna.**

6. The learned Senior Counsel submits that there was no iota of evidence whatsoever against the present applicant. He is not named in the first information report. The investigation against the three accused is completed. As on 20.2.2015, the State CID had taken over the investigation. The charge sheet was filed on 26.2.2015 against the three accused persons to avoid delay in filing charge-sheet. That the charge-sheet was filed against the present applicant under Section 299 of Cr.P.C.

7. The learned Senior Counsel vehemently submits that there was no iota of evidence to charge sheet the present applicant under Section 299 of Cr.P.C. He was never summoned by the police by filing an application under Section 160 of Cr.P.C. The investigating agency had visited the house of the applicant only once and had left a message with the family members. In fact, there was no reason for the investigating agency i.e. State CID to charge-sheet the present applicant under Section 299 of Cr.P.C. more so, because the investigation was transferred to State CID on the basis of an application made by the father of the applicant who by then was a Sitting M.L.A. of Ruling Party. The learned Senior Counsel submits that the investigating agency had not stopped at just charge-sheeting the accused, but had filed an application before the learned Magistrate to issue non-bailable warrant against the present applicant and accordingly, non-bailable warrant was issued by the Magistrate on 29.12.2015 under Section 73 of Cr.P.C.

8. It is pertinent to note that no application was filed for cancelling or recalling the NBW. On 28.1.2016, an application seeking pre-arrest bail was filed before the Sessions Court at Solapur. The said application was rejected on 1.3.2016. The applicant had approached this

Court by filing an application under Section 438 of Cr.P.C. By an order dated 15.3.2016, the applicant was granted ad-interim relief by this Court. The learned Senior Counsel submits that the applicant had not suppressed the fact that a non-bailable warrant was issued against him. However, it does not appear from the order that the said issue was argued and, therefore, it was not considered while granting ad-interim relief. Subsequently, the non-bailable warrant was recalled in view of the fact that ad-interim relief has been granted by the High Court. It is submitted that on 8.12.2014, the police machinery had filed a report under Section 169 of Cr.P.C. in respect of the accused Sharad Shinde.

9. It was argued before the learned Predecessor Bench that all the three accused had filed an application before the trial Court soliciting to undergo a polygraph and narco analysis test. It is true that the investigating agency had also filed an application seeking the same relief. The relief was granted. The polygraph test was conducted and the result was inconclusive

10. It is also submitted by the learned Senior Counsel that the first informant had filed a Writ Petition challenging the transfer of investigation

to State CID. The said Writ Petition was rejected. The same was challenged before the Hon'ble Apex Court which was also rejected. It is also submitted that the wife and son of the deceased had expressed their suspicion against the first informant by filing a Writ Petition before this Court. It is vehemently submitted that a political colour is being given to the homicidal death of Gurunath Katare and the present applicant is being falsely implicated without there being justifiable grounds even to suspect his involvement.

11. It is in the light of these submissions that this Court has perused the papers of investigation only to ascertain as to whether there was any good ground for suspecting the involvement of the applicant and further as to whether the applicant has co-operated with the investigating agency despite the fact that his father had sought transfer of the investigation to State CID on the ground that a political colour is being given to the unfortunate homicidal death of Gurunath Katare.

12. The case diary of 7.12.2014, would also indicate that a C.D. of the campaign of Sidram Patil was seized by the police. That one firm

called “In Cable” was being run by the brother of he present applicant. One Ajay Sarangmath was working as a videographer and was covering the campaign of father of the applicant. He was called by the police on 8.12.2014 and his statement was recorded which indicated that on 7.10.2014 and 8.10.2014, the present applicant had asked him to accompanying him to a hotel i.e. Hotel Swaraj on Hyderabad Road where he had met the arrested accused persons.

13. The learned APP, at this stage, submits that in view of the investigation carried out, the investigating agency wanted to record the statement of the present applicant. They had, therefore, started searching for the applicant as he was not amenable to the police machinery. There was no co-operation from the family members, including father of the present applicant. On 5.1.2015, the investigating agency had been to the house of the present applicant situated at A-1 Chowk, Akkalkot City. Written instructions were given to the P.I. at Akkalkot On 6.1.2015 also the applicant was searched in Indi, District Vijapur as it was likely that he was conceiling himself in the house of his relatives. They also enquired with several people who were related and acquainted with the applicant. The news was published in all newspapers. The applicant was searched at all

possible places, including Kumtha where he had a farm house, at Indi, North Kasba, his ancestral house at Majrewadi and the house at Railway Lines Solapur. On 9.1.2015 also the applicant was being searched. On 24.1.2015 also the applicant was searched. All the houses of the applicant, including the house of father of the applicant, which is named as Laxmi Namo, Pramila Park, Akkalkot was searched, which was being used as the office of the political party. The brother of the applicant, who was running the firm called “In Cable”, was also searched. The house search panchnama was recorded. The police had also searched and enquired with the elder brother of the applicant namely Sanjiv. The learned APP rightly submits that the investigating agency was left with no alternative but to file charge-sheet against the applicant under Section 299 of Cr.P.C on 26.2.2015.

14. The learned APP vehemently submits that since the investigation was being transferred to State CID at the behest of the father of the present applicant, and in the eventuality that the applicant was innocent, it was incumbent upon him to co-operate with the investigating agency so much so that the purported ally of his father had met a homicidal death. It was incumbent upon him to help the investigating agency and

there was no reason for him to conceal himself. It is also submitted that it cannot be said that none of the family members including the father of the present applicant had not informed him that he is being searched by the investigating agency. It is vehemently submitted by the learned APP that seeking transfer of the investigation to State CID was only an Eye-Wash and a political move by the father of the present applicant. The applicant had anticipated that there would be discrepancy in the investigation and he could safely get the benefit of the same.

15. Prior to apprehending the present applicant, the statement of the arrested accused was recorded under Section 164 of Cr.P.C. It is pertinent to note that only after the applicant was being searched, and charge sheet was about to be filed, the accused had retracted from the statements under Section 164 of Cr.P.C. The learned APP submits that it needs to be inferred that the arrested accused had been won over by the applicant.

16. It is further pertinent to note that the three arrested accused were having criminal antecedents. That Pramod Swamy was an accused in the murder of Santosh Ghagare. He was also charge-sheeted for the offence

under Section 395 of IPC. They could not have motive to cause the death of Gurunath Katare unless they were hired for the same.

17. The State CID had filed charge-sheet within six days as there was no time for elaborate investigation or else an indefeasible right would accrue upon the accused to be enlarged on bail.

18. On 25.3.2015, the State CID had recorded the statement of one Khajabhai Moiddinsab Shaikh, wherein he had disclosed that while he was in jail, he had met the accused Pramod Swamy. They had developed friendship. In 2010, Pramod Swamy was in jail for having caused the murder of Santosh Ghagare. He was convicted in the said case and was enlarged on bail in June 2014. Pramod Swamy had met Khaja Shaikh. According to Khaja Shaikh, the second wife of the father of present applicant Ashabi was a Muslim and he used to visit her house. Khaja Shaikh was also residing in the same area. Subsequently, Ashabi was shifted from the said area and was residing elsewhere. However, he continued to be a follower of Sidram Patil and on every festival, he used to set up a digital board of Best Wishes to Sidram Patil. He had further disclosed that he had introduced Pramod Swamy to the father of the present

applicant as the person who had caused homicidal death of Santosh Ghagare. He had also introduced Pramod Swamy to the present applicant as the person who had caused homicidal death of Santosh Ghagare. It is pertinent to note that in all the statements of the witness, the present applicant has been referred as `Ramesh Anna' or `Anna'. The statement further disclosed that Pramod Swamy and the third accused Deepak had become close allies of Ramesh Anna and were moving with him at all times and at all places.

19. The statement of one Ramesh Torangi was recorded who had disclosed that Gurunath Katare had filed nomination form as an Independent Candidate. Subsequently, the father of the present applicant had accompanied him to withdraw the said candidature. It is also disclosed that on the day of incident, the present applicant had contacted Torangi at about 8.30 p.m. i.e. just prior to the incident and had enquired about the whereabouts of Katare. Torangi had informed the applicant that throughout the day, Katare had not accompanied them for the purpose of campaign and was elsewhere. He had also disclosed that just prior to the date of incident, they had been to the house of Umakant Rathod along with Katare. There was some talk between Umakant Rathod who was the Member of Zilla Parishad and Katare. The money that was to be distributed amongst the

voters was not being distributed by Honrao and Shirish Patil. They had lunch on the Dhaba of Honrao. Katare had rupees two lakhs for distributing to the voters, but he had not been to Akkalkot and had halted with Honrao at Hotel Shiv Park. The whereabouts of Katare were informed to the present applicant. It was seen from the C.D. for campaign that during the period 11.10.2014 and 13.10.2014, the arrested accused were not seen in the campaign.

20. The learned APP has placed on record the transcript of the conversation between Pramod Swamy and Jagdish Kenherikar dated 24.11.2014 i.e. prior to their arrest on 1.12.2014. It would not be proper for this Court to bring on record the entire conversation between the two arrested accused as it may form a part of the supplementary charge-sheet to be filed against the present applicant after his arrest. Suffice it to say that there is a reference to the present applicant to the extent that he would definitely pay the consideration to both the accused. A part of the conversation would show that the description given by the first informant was similar to that of Deepak and, therefore, they were saved. They had exchanged the confidence that they had caused the homicidal death at the behest of Ramesh Anna in such a safe manner that they could not have

been apprehended. They were keeping track of the newspapers. The conversation on 25.11.2014 also shows that on the next day, they were to meet the present applicant and ask to give an Android cellphone. They had also expressed confidence that even if they are arrested, the charge sheet would not be filed within 90 days and, therefore, they would get the indefeasible right under Section 167(2) of Cr.P.C.

21. The learned APP rightly submits that considering the nature of conversation between the two accused dated 24.11.2014 and 25.11.2014, the State CID had rightly filed the charge sheet on 26.2.2015 only to see that an indefeasible right under Section 167 of Cr.P.C. is not accrued upon the arrested accused.

22. As on today, there is more than sufficient incriminating material which would entitle the investigating agency to have the custodial interrogation of the present applicant.

23. It is commonly seen that political murders are hatched by the interested people. There is a conspiracy. That the habitual offenders and convicts are hired for committing murders and they would leave no trace of

any incriminating material against themselves. It is a matter of record that there is no fear of law only because the lacunas in the course of investigation always go to the benefit of the accused. The time has come to see that the accused do not take the benefit of any lacunas in the investigation. As far as this case is concerned, the State CID has done a commendable job to draw the trail of investigation which ultimately leads to the involvement of the present applicant. It would be humiliating to the investigating agency in the eventuality that their investigation is not taken to a logical end. Liberty of an individual has to be weighed against the law and order, safety and security of the society at large and therefore it cannot always be said that the liberty of an individual is of paramount importance. In the present case, the charge is framed against the arrested accused. Since the present applicant is not arrested, the supplementary charge sheet cannot be filed. It would not be appropriate to grant pre-arrest bail to the applicant in such a case where he is being prosecuted for an offence punishable under Section 302 of the IPC. This would be like giving a signal to the society that political leaders (in the present case, sitting M.L.A.) can simply get away from the clutches of law by using their mettle to influence the investigating agency and misleading Courts by giving an eye-wash.

24. The learned APP submits that it was really fortunate that the application filed by the father of the applicant to transfer the investigation to State CID was allowed and upheld right upto the Hon'ble Apex Court. In this view it would be like diminishing the morale of the State CID in conducting proper investigation and taking it to its logical end as they would lose all hopes in conducting the investigation in proper perspective. It would be futile to allow the applicant to be at large and enjoy the liberty under Section 438 of Cr.P.C. which deserves to be given not as a matter of course, but in special circumstances.

25. It has become incumbent upon this Court to consider the happenings in the system at large. It is in these circumstances that this Court is not inclined to grant pre-arrest bail in favour of the present applicant. There is no hope whatsoever that in the eventuality that he is granted pre-arrest bail, he would co-operate with the investigating agency even remotely and even if he pretends to do so, he, in all probabilities, is likely to mislead the investigating agency. The conduct of the applicant needs to be taken into consideration. At least 3-1/2 months prior to filing of charge sheet under Section 299 of Cr.P.C., the investigating agency was searching for the applicant at all possible places including his own house, the house of his father and the houses of his two brothers, the relatives in a

different State i.e. in Maharashtra and Karnataka, all other places and which the applicant had shown no courtesy to even file an application for pre-arrest bail at that stage. The application under Section 438 of Cr.P.C. was filed only after a non-bailable warrant was issued by the Magistrate. It is in these circumstances that the oral prayer for suspending the order of rejection of the application under Section 438 of Cr.P.C. The possibility that the applicant would cause disappearance of evidence in the interregnum cannot be ruled out. It is rejected.

26. For the abovementioned reasons, the application stands rejected.

(SMT.SADHANA S.JADHAV, J.)