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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1198 OF 2016

Vishnu Maruti Bhosale	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

ANTICIPATORY BAIL APPLICATION NO.1199 OF 2016

Vinod @ Vinayak Kondiba Sarvade	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr. M.S. Mohite i/b. Niranjan P. Shimpi for applicants.

Mr. Deepak Thakre, APP for respondent-State.

Mr.Rajan Power for the original complainant.

CORAM : A.M.BADAR, J.

DATED : 3RD AUGUST, 2016

P.C. :-

1. Applicant Vishnu Maruti Bhosale (ABA/1198/16) and applicant Vinod @ Vinayak Kondiba Sarvade (ABA/1199/16) who are accused in Crime No.214/2016 for the offences punishable under sections 302, 120B read with 201 of the Indian Penal Code registered with Jodbhavi Peth Police Station, Solapur at the instance of the informant Pandurang

Bhosale by these application are praying for pre-arrest bail.

2. Mr.Rajan Pawar, Advocate appearing for the informant Pandurang Bhosale sought leave to place on record his Vakalatnama in both the matters. Leave granted.

3. Heard the learned counsel for applicants. He argued that the F.I.R. lodged by Pandurang Bhosale reflects that on two occasions applicant Vinod Sarvade has shown his inclination to settle the matter in getting his sister Rajashri divorced from her husband Akash so as to enable her to live her life with Ishwar. The learned counsel further argued that there is no iota of evidence to show that both applicants were present at the house where the alleged incident is stated to have been committed. The learned counsel argued that the informant Pandurang was at Mumbai when the incident had happened. As such, he had no personal knowledge of the incident. Applicant Vinod had been to Mumbai to fetch his sister Rajashri (since deceased). Applicant Vishnu Bhosale, who is the maternal uncle of deceased, was at Jaisinghpur when the incident of death of Rajashri took place at his house. The learned counsel further argued that as there is no

evidence against present applicants in the F.I.R. lodged after a month from the death of Rajashri, their pre-trial detention is not warranted.

4. The learned APP opposed the application by arguing that Pandurang shows that during inspection of the spot of incident, pillows were missing. The learned APP submitted that an anonymous letter is received by the police wherein it is averred that Rajashri was done to death by smothering her by means of pillow. Therefore, according to the learned APP missing of pillows shows that Rajashri died homicidal death. The learned APP further argued that statements of Navnath Mohite and Pravin shows that there is no entry of funeral of the deceased at the Crematorium. According to the learned APP, the investigator had recorded statements of several doctors. Those statements show that Rajashri was not taken to any hospital for medical treatment. The learned APP pointed out statement of Sheetal Kulkarni go show that he is compounder in the hospital of Bhosale and he had not treated Rajashri. The learned APP relied on statements of Ishwar, Shantanur Bhole and Narayan Sarvade to point out that Rajashri died a homicidal death and

applicants along with co-accused have caused her death. He argued that applicant Vishnu Bhosale has criminal antecedents.

5. Perused the papers of investigation. It is seen from the papers of investigation that Rajashri wife of Akash died on 24th April, 2016 at the house of her maternal uncle i.e. present applicant Vishnu Maruti Bhosale. The F.I.R. in respect of death of Rajashri came to be lodged on 2nd June, 2016 by Pandurang Bhosale, who is uncle of Ishwar. Papers of investigation including the F.I.R. reveals that Rajashri married Akash, who is son of her aunt. Yuvraj is brother of Rajashri. He married on the day Rajashri married Akash. Subsequently, as seen from the papers of investigation, Rajashri eloped with Ishwar on 28th March, 2016. Two three days after 28th March, 2016, the informant Pandurang was informed by Siddeshwar that Rajashri and Ishwar are at Mumbai. On getting this information, informant Pandurang Bhosale along with his wife, son Arjun as well as Yuvraj Sarvade, Anil Sarvade and Kishore Sarvade proceeded to Mumbai in Scorpio vehicle. There they met Rajashri and Ishwar near Shaitan police outpost. The F.I.R. reveals that Rajashri was not willing to go back to Solapur as

she was apprehending that her brother Yuvraj may kill her. It is seen from the F.I.R. that applicant Vinod Sarvade had initially told the informant that they will fetch Rajashri back to Solapur and then they will solve the issue by arranging a meeting. Even after the meeting Rajashri and Ishwar when Rajashri expressed her fear, applicant Vinod told her that he will arrange meeting of the members of the Samaj and he will get her divorced from Akash. The F.I.R. shows that thereafter, Rajashri was taken back to Solapur in the same vehicle at the instance of co-accused Yuvraj. Wife of informant Pandurang was also accompanying Rajashri in her journey from Mumbai to Solapur. From papers of investigation, it is seen that Rajashri was at the house of her maternal uncle i.e. applicant Vishnu Maruti Bhosale.

6. Now, let us examine whether there is atleast some prima facie evidence to connect applicants to the crime in question. Death is alleged to be by smothering in the house of applicant Vishnu Maruti Bhosale. Spot panchanama do show that two covers of the pillow came to be seized. It nowhere shows that the pillows were missing from the house of applicant Vishnu Maruti Bhosale.

7. Careful perusal of evidence of Navnath Mohite and Pravin shows that they used to be at the crematorium. They used to collect donation from the people visiting the crematorium. They have stated that no donation was paid when Rajashri was cremated at the crematorium. From the perusal of their statements, it appears that the donation is not mandatory nor the entry in that regard is in pursuance of the statutory requirement of registration of birth and death of a person.

8. Statement of Sheetal Kulkarni goes to show that in fact he was called on 24th April, 2016 by Ravidas Sarvade to check Rajashri. He saw Rajashri at the house and stated that her right hand had turned red. Statement of Sheetal Kulkarni goes to shows that there was gathering of male and female and females were weeping.

9. During the investigation, statements of several neighbourers came to be recorded. Kisan Sarvade, Bhausahab Bhosale, Vishal Borkar and Shankar Bhosale are some of them. They all had attended the funeral of deceased Rajashri.

They are the next door neighbours of Kondiba Sarvade – deceased father of Rajashri. Perusal of their statements reveal that they either gathered voluntarily or at the call of co-accused Yuvraj. Record of investigation shows that after death of Rajashri, her dead body was taken to the house of her husband Ishwar. Lot of people had gathered there. It was decided to conduct the funeral as per the rites. Statement of these witnesses go to show that in fact police visited the spot to see the dead body. *Prima facie* it appears that nothing fishy was found by the police and, therefore, the police left the spot. Thereafter the dead body of Rajashri was taken to the crematorium.

10. Applicant Vishnu Bhosale at whose house the incident of death of Rajashri happened is contending that on 24th April, 2016 i.e. on the date of incident, he was not present at the house and for that purpose he had relied on the affidavit of witnesses and also relied on the receipt of the car hired by him for going to Jaisinghpur. As per his contention, he had been to Jaisinghpur on that date and was not present at Solapur. Statement of Santaji Bhole is relied upon by the learned APP. The statement of this witness in fact goes to

show that on 24th April, 2016 at about 7.00 a.m. applicant Vishnu Maruti Bhosale along with wife and daughter had gone out somewhere in four wheeler vehicle. Record of investigation do not show that the investigator had found applicant Vishnu Bhosale to be present at his house on the date of incident. It is seen that dead body Rajashri was cremated in presence of lot of people after police had been to the house after her death. Santaji Bhole and Narayan Sarvade had not attended the funeral. They are merely expressing doubts about death of Rajashri. Ishwar with whom Rajashri had eloped is only apprehending something wrong in death of Rajashri.

11. The learned counsel for the informant in clear terms has stated that the informant is only suspecting co-accused Yuvraj in commission of the crime in question.

12. This is what is the evidence collected by the prosecution in this crime. Prima facie, there is no evidence to connect applicants to the crime in question. Arrest leads to serious consequences not only against applicants but against members of their family also. It creates humiliation and

disgrace. Considering the evidence against applicants, their custodial interrogation is not warranted. Hence the order :-

- (i) The application is allowed;
- (ii) In the event of arrest, applicants / accused in Crime No.214/2016 for the offences punishable under sections 302, 120B read with 201 of the Indian Penal Code registered with Jodbhavi Peth Police Station, Solapur be released on bail on their executing P.R. bond in the sum of Rs.15,000/- each with one or more sureties in the like amount by each of them;
- (iii) As a condition of this order, applicants / accused shall attend Jodbhavi Peth Police Station, Solapur on every Saturday and Sunday between 11.00 a.m. to 2.00 p.m. till the filing of charge-sheet and they shall co-operate with the Investigating Officer;
- (iv) Applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so

as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence;

- (v) Applicants / accused shall co-operate for expeditious disposal of the trial;
- (vi) Applicants / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;
- (vii) The application is disposed of accordingly.

(A.M.BADAR, J.)