

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1500 OF 2016

Jagadish Balwant Thete ..Applicant.
Vs.
State of Maharashtra ..Respondent.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1507 OF 2016

Mayur Motiram Thakare ..Applicant.
Vs.
State of Maharashtra ..Respondent.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1512 OF 2016

Santosh Balaram Vishe ..Applicant.
Vs.
State of Maharashtra ..Respondent.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1513 OF 2016

Keval Suresh Gaikar ..Applicant.
Vs.
State of Maharashtra ..Respondent.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1514 OF 2016

Ajay Motiram Thakare ..Applicant.
Vs.

State of Maharashtra

..Respondent.

Mr A.P. Mundargi, Senior Advocate i/by Vinayak Patil for the applicant in ABA No.1500/2016 and 1514/2016.

Mr A.H. Ponda i/by Ranjeet Ade for the applicant in ABA No.1507/2016.

Mr K.S. Labane for the applicants in ABA No. 1512/2016 and 1513/2016.

Mr S.K. Shinde, Public Prosecutor with Smt. S.S.Kaushik, APP for the Respondent-State.

Mr Aniket Nikam for the original–Complainant /Intervener.

CORAM : A.S.GADKARI, J.

DATED : 19th OCTOBER, 2016

P.C.

1) The present applications under section 438 of Cr.PC are filed for pre-arrest bail in CR No. I-337 of 2015 dated 28/12/2015 registered with Ambernath Police Station, District Thane under sections 302, 143, 144, 147, 148, 149, 341, 201 and 120 (B) of the Indian Penal Code and under section 4 r/w 25 of the Indian Arms Act and under section 37 (1) r/w 135 of the Maharashtra Police Act.

2) The first information report is lodged by Mr Vinod Sudam Bhor on 25/12/2015. It is stated in the said report that the first informant was working with deceased Ramesh Sahebrao Gunjal @ Pappu Gunjal and was looking after the business of building material supply. That on 25/12/2015

at about 10:15 a.m. he had been to the house of Pappu Gunjal on his motor cycle for work when it was informed to him that Pappu Gunjal had gone alone for shaving, on his motorcycle. He therefore proceeded to the said place. When he reached near the M.S.E.B. Office, Morivali naka, he saw that 15 to 16 persons had encircled Pappu Gunjal and were assaulting him with swords and choppers. He therefore reached to the said spot and noticed that amongst other named assailants the applicants, namely, Jagdish Thete (ABA No. 1500/2016), Mayur M. Thakare (ABA No. 1507/2016), Keval Gaikar (ABA No. 1513/2016) and Ajay Thakare (ABA No.1514/2016) were assaulting Pappu Gunjal. He has further stated that all the accused persons were shouting and encouraging others to kill Pappu Gunjal and were also hurling abuses in filthy language. That due to the injuries suffered by Pappu Gunjal, he fell down and thereafter the aforesaid applicants along with other accused persons fled away from the scene of offence from an Innova like car bearing No. MH-04-ED-9394 having white colour and on five to six motorcycles, towards Morivali naka. It is

specifically stated in the first information report that the accused persons namely Shankar Chalavadi, the applicants Jagadish Thete, Mayur Thakare and Keval Gaikar were having earlier enmity with Pappu Gunjal and due to the same they assaulted him with the said deadly weapons. It is further stated in the first information report that when the first informant and Hamid Sayyad, the driver of Pappu Gunjal were carrying Pappu Gunjal to the hospital, Pappu Gunjal told them that Pintya Gaikar, Ramdas Gaikar Mayur and Omkar along with other boys did the said act which was not good and thereafter he fell unconscious. That due to the assault committed by the applicants along with other accused persons, Pappu Gunjal suffered grievous injuries on the backside of his head, neck and both of his hands and while taking treatment at Shridevi Hospital, Kalyan, he was declared dead. In the premise the first information report is lodged.

3) Heard the learned counsel for the respective parties, the learned Public Prosecutor and also perused the entire charge-sheet annexed to the applications.

4) Mr Mundargi, the learned Senior Counsel submitted that it is only the first informant, who has named the applicants namely Jagadish Thete, Mayur Thakare, Keval Gaikar and Ajay Thakare and no other eye-witness has named them. That there are about four independent eye-witnesses to the incident who have not named the said applicants in the present crime. He submitted that the prosecution has recorded the statement of witness namely Pramod B. Rasal dated 11/2/2016 which speaks about the conspiracy hatched by the applicants along with other accused persons. That the date of incident is 25/12/2015 and the statement of said witness Pramod Rasal is recorded belatedly on 11/2/2016 by the prosecution revealing the conspiracy which was hatched on 23/12/2015 at about 9:00 p.m. He submitted that the prosecution has not explained the delay in recording the said statement belatedly. He further submitted that the conduct of the said witness is unnatural, as he did not disclose the said fact to the police for more than 45 days. He submitted that after

completion of investigation the police have now submitted charge-sheet and the custodial interrogation of the applicants is not necessary. He therefore prayed that the applicants may be granted pre-arrest bail.

5) Mr Ponda, learned Counsel appearing for the applicant Mayur Thakare (ABA No.1507/2016) in addition to the arguments advanced by Mr Mundargi, submitted that the alleged oral dying declaration given by the deceased Pappu Gunjal to the first informant Vinod Bhor cannot be given any credence as it was impossible for Pappu Gunjal to speak, while he was being taken to the hospital. He submitted that clause no. 17 of the postmortem notes of deceased Pappu Gunjal would reveal that the injury no.16 mentioned therein was “a big deep incised cutting wound, deep up to cervical part of vertebra, fracture cut of all major vessels (trachea larynx / carotid) over back of neck about 17 cm in length x 2.5 cm x 1.5 cm x 15 cm, fracture cut of cervical vertebra” and therefore the death of the deceased might have been instantaneous. He further submitted that even the inquest panchnama denotes that the right side of

the neck of deceased was cut with a sharp edged weapon. He therefore submitted that not only the alleged dying declaration given by the deceased to the first informant is an exaggerated version, but there is every possibility that the first informant has narrated the facts in the said report with a view to implead the applicants in the present crime.

6) Mr Labana, learned Counsel appearing for the applicant Santosh Vishe (ABA No. 1512/2016) in addition to the arguments advanced by learned Counsel, Mr Mundargi and Mr Ponda, submitted that the name of the said applicant is neither mentioned in the first information report nor stated by any of the witnesses in the present crime. He submitted that the prosecution has relied upon the CDR of his mobile phone and of co-accused Shivdas Gaikar and that is the only piece of evidence against the said applicant. He submitted that merely because the applicant Santosh Vishe had a talk with co-accused Shivdas Gaikar on the fateful day, it cannot be said that he has acted in furtherance of the said conspiracy. He further submitted that the investigation of the present crime is

completed and the police have already submitted the charge-sheet and the custodial interrogation of the applicants is, now, not necessary and the applicants may be granted pre-arrest bail.

7) Per contra, Mr S.K.Shinde, the learned Public Prosecutor, strenuously opposed the applications and submitted that the evidence on record would reveal that the names of the applicants Jagadish Thete, Mayur Thakare, Keval Gaikar and Ajay Thakare are mentioned in the first information report alongwith the specific role attributed to them. He further submitted that as per the evidence on record, the applicants Jagadish, Ajay and Mayur were present on 23/12/2015 when conspiracy to eliminate deceased Pappu Gunjal was hatched. He further submitted that the applicants were avoiding their arrest since the date of commission of the offence till they were granted interim relief by the Trial Court. That the Trial Court by its Order dated 31/5/2016 while granting interim relief to the applicants had directed them to attend the Investigating Officer on every Saturday between 9:00 a.m. to 10:00 a.m.

till the hearing of main applications. That though the applicants attended the Investigating Agency on stipulated dates, they did not co-operate in the process of investigation and did not reveal the vital aspects pertaining to the present crime which are within their exclusive knowledge. He further submitted that the applicant Jagadish Thete (ABA No. 1500/2016) has administered threats to the wife of the deceased namely, Smt. Jaya Gunjal and witness namely, Umesh Jangle and therefore, non-cognizable complaints have been recorded by Ambernath Police Station.

As far as the contention raised by Mr Ponda that the deceased was not in a condition to give oral dying declaration is concerned, Mr Shinde submitted that even if that piece of evidence is kept aside from consideration, the evidence so far collected by the Investigating Agency would unequivocally points out the direct complicity of the applicants in the present crime and without their custodial interrogation the investigation cannot be taken to its logical end.

8) He further submitted that the applicants Jagadish Thete, Mayur Thakare, Keval Gaikar and Ajay Thakare are having antecedents at their discredit and when they were on bail in earlier crimes have committed the present crime. He therefore prayed that the present applications may be rejected.

9) The material available on record i.e. the statements of the witnesses would reveal that the applicants Jagadish, Mayur, Keval and Ajay are named as accused persons in the first information report along with the specific role attributed to them. That witness Pramod Rasal in his statement has categorically stated that the applicants Jagadish Thete, Ajay Thakare and Mayur Thakare were present at the meeting where the conspiracy to eliminate deceased Pappu Gunjal was hatched on 23/12/2015 at about 9:00 p.m. at the house of co-accused Gurnath Gaikar. As far as the delay in recording his statement is concerned, the said witness has explained the same by stating that after the conspiracy was hatched the same was implemented by the applicants along with co-accused and

because of the same his mental condition was not proper and therefore he did not immediately inform the said fact to the police. Prima facie it appears to me that the said witness has satisfactorily explained the delay caused in recording his statement. It is to be noted here that there are in all 19 accused persons in the present crime out of which the police have arrested 12 accused persons. The papers of investigation would further reveal that till date the police have recovered/seized eight weapons in the present crime and the weapons used by the present applicants are yet to be recovered.

10) As far as the applicants namely Jagadish Thete, Ajay Thakare, Mayur Thakare and Keval Gaikar are concerned, they have taken active part in the commission of the present crime and the weapons used by them are necessary to be recovered and the same is not possible without their custodial interrogation by the police.

11) Apart from the aforestated fact, the record reveals that there are antecedents at the discredit of the said applicants. Jagadish Thete is an accused in three

crimes registered with Ambernath (West) Police Station and when he was on bail in the said crime has committed the present crime. The record further reveals that the applicant Jagdish Thete during the pendency of the anticipatory bail application, has alleged to have extended threats to Smt. Jaya Gunjal wife of deceased Pappu Gunjal and the witness namely Umesh Jangle. That Smt. Jaya Gunjal has lodged N.C. No. 1071/2016 under section 506 of the IPC with the Ambernath Police Station alleging that the applicant Jagdish Thete has threatened her. That witness Umesh Jangle has lodged N.C. No. 1192/2016 under section 506 of the IPC with the Ambernath Police Station making similar allegations against the applicant Jagdish Thete.

That applicant, Ajay Thakare is an accused in five crimes, Mayur Thakare is an accused in two crimes and Keval Gaikar is an accused in one crime registered with the same police station and when they were on bail in the said crimes have committed the present crime.

12) As far as the applicant Santosh Vishe is concerned, in the present crime, he was assigned with a role to keep a

watch on the movements of the deceased. The evidence on record reveals that the applicant Santosh Vishe was in contact with co-accused Shivdas Gaikar on the date of incident i.e. on 25/12/2015 from 5:45 a.m. to 10:19 a.m. i.e. before and after the commission of the present crime. That the applicant Santosh Vishe was having conversation with co-accused Shivdas Gaikar for about 35 minutes from 9:45 a.m. and after commission of the assault on deceased, he again had conversation with the said accused at about 10:19 a.m. for about 10 minutes. The record further reveals that the applicant Santosh Vishe had conversation with co-accused Ramdas Gaikar for about 13 minutes on that day. The witnesses namely Umesh Basare and Sagar Tavle have stated that on 25/12/2015 they saw the applicant Santosh Vishe outside the saloon, where deceased Pappu Gunjal was having his hair cut and shave and the said applicant was talking continuously with somebody on the mobile phone, informing the person on the other side about the movements of deceased Pappu Gunjal. Witness Sagar Tavle has categorically stated that he heard applicant Santosh

Vishe informing on mobile phone to somebody that the deceased was leaving the saloon and be ready. The prosecution has also relied on the CDR record of the mobile phone of the applicant Santosh Vishe with co-accused Shivdas and Ramdas. Thus, in view of the material so far collected by the prosecution prima facie the complicity of the applicant Santosh Vishe in the present crime is apparent.

13) That in the considered view of this Court the custodial interrogation of all the applicants is necessary for further unearthing the entire truth behind the crime and for taking the investigation to its logical end.

14) After taking into consideration the serious allegations against the applicants and the gravity of the offence, this Court is of the view that the applicants does not deserve to be protected by way of pre-arrest bail.

The applications are accordingly rejected.

(A.S.GADKARI, J.)