

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1654 OF 2016

Vitthal Rajaram Shitole. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. M.S. Mohite i/b. Mr. Prashant M. Patil, advocate for Applicant.

Mr. M.K. Kocharekar, advocate for complainant.

Mr. Prashant Jadhav, APP for State.

Mr. Dattatray M. Darade, API, Loni-Kalbhor Police Station, Pune.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 26, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein apprehends his arrest in crime

No. 568 of 2016 registered at Lonikalbhor police station for the offence punishable under section 302, 143, 147, 148, 149 of the Indian Penal Code and section 3 r/w 25 of the Indian Arms Act and section 135 of Bombay Police Act and Section 3(2) (5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

3 It is the case of the prosecution that on 21/7/2016 complainant Smt. Priyanka Nagesh Londhe lodged report at the police station alleging therein that in the year 2009 she got married with Nagesh @ Dada Londhe. It was a love marriage. It was an intercaste marriage as the complainant belongs to Hindu Mahar caste, whereas her husband belonged to Hindu Mang Garudi caste. It is alleged that ever since she got married, her maternal uncle Sanjay Narayan More and his son Machchindra Sanjay More were annoyed with her and her mother. There were no cordial relations between them. That brother of co-sister Vaibhav Londhe had quarelled with Machchindra More in January 2016. In the said quarrel one of the distinct relative of the applicant was also involved. Nagesh had interfered.

4 On 22/7/2016, the complainant was to celebrate the birthday of her daughter Neha. She had been to village Khadaki for purchasing. At that time, her husband was at home. She returned home in the evening. It is alleged that Adesh Shitole who happens to be another relative of the present applicant had called upon her husband for dinner. Her husband had gone to meet Adesh Shitole in his own car bearing No. MH 12 FF 2109. She waited for her husband. But he did not return. At about mid night i.e. at 1 a.m. she also tried to call her husband on his cell phone. But there was no reply. When they were searching for her husband, they saw his car near Shitole vasti. She realised that her husband had met a homicidal death and dead body was in the car. It is alleged that thereafter, she contacted her relatives and informed them that 8 persons named in the FIR have caused homicidal death of her husband. It is a matter of record that the name of the present applicant does not appear in the first information report.

5 On the same day in the evening, supplementary statement of the complainant was recorded and she disclosed to the police that initially the applicant was a good friend of her husband. But they had a quarrel and since then they were not on talking term. It is alleged that Adesh Shitole had deliberately called upon her husband only to facilitate the commission of murder of Nagesh. In the supplementary statement, it is specifically stated that the present applicant is the principal accused and he is also responsible for the homicidal death of her husband.

6 On the basis of the supplementary statement, the present applicant was also arraigned as an accused. He apprehends arrest and therefore, approached the Sessions Court seeking pre-arrest bail by filing Criminal Application No. 2934 of 2016. In the course of hearing of the said application, the complainant had filed an affidavit before the Sessions Court and had specifically contended that she had lodged the first information report at 7.30 a.m. and at about 5 p.m. her supplementary statement was recorded. She has also contended

that she has implicated the present applicant due to misunderstanding. It is further contended that they are in no way concerned with the homicidal death of her husband. She has also stated that Adesh Shitole and the present applicant could be the key witnesses in the said case.

7 Today, in the course of hearing of this application, the complainant is being represented by an advocate who has specifically stated that there is no question of tampering of evidence or the complainant being won over but because of the intercaste marriage, due to which her relatives were annoyed with her, she has implicated the present applicant. The complainant is present in the court.

8 This Court taking into consideration the conduct of the complainant had called upon her and asked as to why she should not be prosecuted under Section 193 of the Indian Penal Code as the applicant is being prosecuted for an offence under Section 302 of the

Indian Penal Code and that she has audacity of resiling from her supplementary statement. At that juncture, the complainant has specifically disclosed to this Court that she has no intention of implicating the present applicant as he happened to be a good friend of her husband. She has further disclosed to the Court that it was due to pressure of her relatives, she has to implicate the present applicant. She has also stated that she is pressurised by her relatives to the extent that unless she arraigns the applicant as an accused, they would not permit her to perform the last rites on the dead body of her husband and to save deceased from humiliation after death and to respect him, she had no alternative, but to arraign the applicant as an accused. She has also shown courage of disclosing to this Court that she would name the persons who had pressurised her to name the present applicant. The applicant is also being prosecuted under the provisions of the Scheduled caste and Schedule tribe (Prevention of Atrocities) Act as the applicant is a Maratha by caste.

9 Today she has informed the court that she has no doubts regarding the present applicant as he was good friend of her husband. The learned Counsel for the applicant has submitted that soon after the homicidal death of her husband, the applicant was the first person whom the complainant approached and at that time, she had no doubt against the present applicant. In the present circumstances, there is every possibility of the complainant being further pressurised by the relatives.

10 Learned APP at this juncture, submits that the investigating officer is present in the court. It is submitted by the learned APP upon instructions that it would be appropriate to record the statement of the complainant today itself, if the Court permits, since the complainant and the Investigating Officer are present. The apprehension that once she returns home, she would be further coerced to change her statement and in that circumstance, the process of investigation and trial would be futile. This Court, in the facts of the case has granted permission, as today she would be able to make

voluntary statement. The matter is kept at the bottom of the board. It is ensured that the complainant is not accompanied by anybody- much less the lawyers, to eliminate any pressure.

11 Later on again the matter is taken up for hearing. Perused the statement and taken on record.

12 The learned APP submits that the said statement will form a part of the investigating papers and the investigating officer would take appropriate action against the persons named by the complainant.

13 This Court cannot be oblivious of the fact that in the given circumstances, the complainant also needs to be protected by the State. In the course of hearing Cri. Writ Petition No. 2591 of 2011 the Division Bench of this Court (Coram : A.K. Khanwilkar & Smt. Sadhana S. Jadhav, JJ), of which this Court was a member, the Court had observed thus :

“1 Two broad issues would emerge for consideration. The first is whether the Government ought to formulate policy to provide protection to witnesses in criminal and serious cases. This issue may not directly arise in the present petition as the trial in which the petitioner appeared as witness was concluded long back in the year 2001. Even then the Court had desired that the State Government ought to examine that aspect of the matter. In response thereto the Public Prosecutor informs that policy for providing police protection to witnesses as per the recommendations made by the Law Commission is being formulated.”

In the course of hearing of the same matter on 2/11/2012, the Division Bench (Coram : A.S. Oka and Smt. Sadhana S. Jadhav, JJ), of which this Court was a member observed thus :

“1. On the last date, we requested the learned Advocate General to look into the aspect of the witness protection in the context of the fact that in large number of cases the prosecution witnesses are not supporting the prosecution. Another important aspect which requires consideration is the payment of reasonable and adequate remuneration to the prosecutors at all levels.

2. As far as the witness protection is concerned, draft circular was placed for our consideration on which we have given certain suggestions to the learned Advocate General. Learned Advocate General states that all aspects will be looked into and, therefore, some time may be granted. Stand over till 30.11.2012 to be shown under caption “directions”. To be placed high upon board.”

In the order dated 10/10/2014 in Suo Moto Writ Petition No. 466 of 2010, the Hon'ble Division Bench (Coram : A.S. Oka and M.S. Sonak, JJ) had observed as follows :

“8. The 198th Report of the Law Commission of India on the Witness Identity Protection and Witness Protection Programmes clearly records that the witness protection is necessary even at the stage of investigation. The report records that even the witness identity protection is a matter of necessity. A judicial notice will have to be taken by the fact that in some cases, even during the course of investigation, the police officers disclose to the media what is revealed by the witnesses. Though they may not be disclosing the names of the witnesses, but from the material disclosed to the media, identity of the witnesses or for that matter the identity of the Complainants or the Victims can be easily established or ascertained.

In fact, we find that while framing the policy under the said Government Resolution dated 11th April 2014, the State Government has completely glossed over the 198th Report of the Law Commission of India on the Witness Identity Protection and Witness Protection Programmes.

- 10 (a) ...
 (b) ...
 (c) ...
 (d) As per the recommendations of the Law Commission of India, the witness protection measures must be taken right from the stage of investigation even before actual recording of statements under Section 162 of the said Code till the conclusion of trial and even thereafter. Giving protection to the witnesses even at the stage of investigation is of vital importance so that the witnesses feel secure when they actually come before the Court for recording of their evidence;”

14 As on today it appears that the rules are not formulated. The present case would be one of the case where the complainant in all probabilities is likely to be harassed by the persons whom she has named in the statement dated 26/9/2016. She appears to be a lonely lady. The complainant has in person submitted to this Court that

after she filed the affidavit in favour of the present applicant, she was threatened by her father-in-law and other members. However, she had gathered courage to tell the relative that she would complain to the police about their act. In such circumstance, the liberty and safety of the complainant needs to be secured as the possibility of threat perception cannot be ruled out.

15 It is a sorry state of affairs that the whole fabric of the society has been tattered to such an extent that false cases are filed against innocent people. The police are put to task to investigate such cases where the complainant and witnesses are misleading at every stage. The courts are also put to task to sift grain from the chaff. Ultimately the courts cannot go beyond the papers of investigation and the material placed before it. That there is a hue and cry from the common man that the court tend to acquit people charged with serious offences. No court can be oblivious of the very foundation of criminal jurisprudence. That no innocent person shall be convicted or taken to altar although 99 accused may go unpunished. A heavy duty

is cast upon the court. It has become a daily experience that there is no fear of law.

16 It is a serious case where innocent people are being implicated in serious offences such as 302 of the Indian Penal Code. The complainant has also stated that the relations of her husband with Adesh Shitole and the present applicant were cordial. That one of the principal accused, whom she has named in the first information report happens to be her own cousin and all the other accused besides Shitole are belonging to the same caste as that of the complainant.

17 It is in this circumstance that this Court is conscious of the safety and security of the widow complainant, who is being used as a bait just to disturb the social equilibrium. Hence, this Court directs the Investigating Officer to ensure that the complainant herein is protected by all means. It is in this circumstances, this Court is constrained to remind the State of Maharashtra to formulate the rules for protection of witnesses in serious cases.

18 The investigating officer present in the court submits that he would be vigilant and diligent in protecting, safety, security and liberty of the complainant.

19 Taking into consideration the nature of allegations and the statement of the complainant present in the court as well as the affidavit filed by her before the Sessions Court and the statement of the complainant recorded by the Investigating Officer on 26/9/2016, the applicant deserves to be granted pre-arrest bail.

20 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No. 568/2016, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- and one or two sureties in the like amount.

(iii) The applicant shall report to the police station as and when called and cooperate with the investigating agency to the best of his capacity.

21 The application is disposed of accordingly.

22 The request to the State of Maharashtra to formulate rules for protection of witnesses in serious cases is once again reiterated and shall be considered on priority basis. The Home Department of the State of Maharashtra shall, especially in cases like the present one, comply with the directions/orders passed by the Hon'ble Division Bench in *Suo Moto Writ Petition No. 466/2010*.

23 Copy of this order be forwarded to the Home Department, State of Maharashtra as well as to the Superintendent of Police (Rural), Pune.

(SMT. SADHANA S. JADHAV,J)