

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

ANTICIPATORY BAIL APPLICATION NO.1456 OF 2015

Prakash Sandeepan Lokare .. Applicant

v/s.

The State of Maharashtra ..Respondent

Mr. Ashok Mundargi, Sr. Advocate i/b. Javed Shaikh for the applicant

Mrs. Veera Shinde, APP for the respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 11th JANUARY, 2016.**

PC.

1. This is an application for anticipatory bail filed by the aforesaid applicant in apprehension of his arrest in Crime No.157 of 2015 registered with Islampur Police Station, Sangli for offences punishable under Section 302, 201 r/w. 34 of the IPC .

2. The case of the prosecution in brief is that, one Ramesh Adake had lodged a report on 13.7.2015 stating that his brother

Sushil Adake had gone missing from 12.7.2015. On 14.7.2015 the body of Sushil was found floating in Krishna River at Dhayari village. Said Ramesh Adake therefore lodged a FIR on 14.7.2015 alleging that the co-accused Saurabh Achange and Nilesh Suryawanshi had committed murder of his brother because of previous enmity. Pursuant to the said FIR, the aforesaid crime was registered. Initially, the applicant was not arrayed as an accused. It is stated that the involvement of the applicant was revealed in the course of the investigation and hence the applicant was shown as one of the wanted accused in the remand application dated 21.7.2015. Apprehending that he would be arrested, the applicant filed an application for anticipatory bail before the Sessions Court at Islampur. The said application was dismissed by the Addl. Sessions Judge II, Islampur by order dated 31.8.2015. Hence the present application.

3. Shri Mundargi, the learned Counsel for the applicant has submitted that the FIR does not disclose the name of the applicant

as an accused. He has further submitted that the statements of the witnesses namely Shubham Lokhande, Sumer Magdum and Jitendra Gawali prima facie indicate that there was some altercation between the deceased and the other co-accused at Friendship Dhaba. The learned Counsel Shri Mundargi submitted that the statements of these witnesses do not indicate that the applicant was present at the said Dhaba.

4. The learned Counsel Shri Mundargi has further submitted that the statements of Vijay Pawar and Ranji Patil who had allegedly seen the applicant assaulting one unknown person at the place of the incident were recorded on 22.7.2015. He further submitted that the applicant herein was the sole witness in the murder case of Dilip Patil, who is the cousin of Ranjit Patil and that the complaint was lodged way back in the month of May 2010 against Ranjit Patil for threatening this applicant not to give evidence in the said murder case. Learned Counsel Shri Mundargi therefore submits that no reliance can be placed on the

statement of said Ranjit Patil.

5. The learned Counsel for the applicant further submitted that Vijay Pawar is a close associate and friend of Ranjit Patil and hence the statement of said witness also cannot be believed. Learned Counsel Shri Mundargi has further submitted that the statements of Sachin Patil and Sanjay Patil, who had allegedly seen the applicant and the other accused throwing something in the river, were recorded only on 23.7.2015 and that there is absolutely no explanation for the inordinate delay in recording the statements of these witnesses. The learned Counsel Shri Mundargi therefore contends that there is no prima facie material to show the involvement of the applicant in commission of the said crime.

6. The learned APP Mrs. Shinde has submitted that the statement of Vijay Patil and Ranjit Patil prima facie proves the involvement of the applicant in the said crime. She has further stated that the witnesses Sanjay Patil and Sachin Patil had also seen the applicant along with the other co-accused, throwing

something in the river from the bridge at Dhayari. She has submitted that the offence is of serious nature and hence the applicant is not entitled for anticipatory bail.

7. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State.

8. At the outset, it may be mentioned that the parameters of grant of anticipatory bail are well settled by the decision of Kamlabai Jaiswal @ Zende Vs. State of Maharashtra, 2002 ALL MR (Cri.) 7716, Siddharam Satlingappa Mhetre vs. State of Maharashtra, Cri. Appeal No.2271 of 2010.

9. In the instant case the records prima facie reveal that Ramesh Adake, the brother of the accused had lodged a report on 13.7.2015 stating that his brother had left the house on 12.7.2015 in the morning hours and that he had not returned home. On

14.7.2015 the body of Sushil Adake was found floating in Krishna river at Dhayari. The said body was retrieved and sent for post-mortem report. The post-mortem report prima facie reveals that there were several stab injuries and chop wounds over the chest and abdomen of the deceased. The doctor had opined that the death was due to stab injury to chest and abdomen. The medical report therefore reveals that the death of Sushil was homicidal.

10. The FIR reveals that there was previous enmity between deceased and Saurabh Achange and Nilesh Suryawanshi, the co-accused in the said crime. The statement of Sagar Tandle, Shubham Lokhande, Sumer Magdum and Manohar Koli prima facie reveals that on 12.7.2015 at Friendship Bar, there was an altercation and quarrel between the deceased Sushil Adake and the co-accused Saurabh and others. The statement of said Sagar Tandle also prima facie indicates that the son of the owner of said Friendship Dhaba had intervened and separated Saurabh and deceased Sushil. The statement of Sagar Tandle further indicates

that while leaving, the co-accused Saurabh had threatened to cause death of Sushil. He has stated that thereafter Sushil had dropped him to his residence and that later on he learnt that said Sushil was murdered.

11. The statements of Vijay Pawar and Ranjit Patil prima facie indicate that on 12.7.2015 at about 11.30 p.m. while they were proceeding towards their residence, they had seen the applicant and the other co-accused assaulting one unknown person in front of Kanya Shala at Takari. Their statements also prima facie indicate that two motor cycles were fallen in the middle of the road. The statements of these two witnesses prima facie indicate that the applicant was present at the place of incident and was involved in stabbing the said unknown person, who had worn green shirt and jeans.

12. The scene of offence panchanama dated 14.7.2015 reveals that the motorcycle of the deceased was found in front of Kanya

Shala at Takari and that there were blood stains at the spot, which fact also prima facie indicates that the said incident of assault had taken place in front of said Kanya Shala at Takali.

13. Shri Mundargi, the learned Counsel for the applicant has placed on record the copy of the N.C.complaint No.105 of 2010 which reveals that one Mansur Shigdhar had lodged a complaint against Ranjit Patil, the witness therein for abusing him and threatening him for giving evidence in Islampur Court. Prima facie, there is no nexus between the complaint dated 22.5.2010 and the present incident. Hence the statement of Ranjit Patil cannot be discarded at this stage. Be that as it may, the statement of Vijay Pawar who has otherwise no enmity with the applicant herein also indicates that the applicant was involved in stabbing said Sushil Adake, and at this stage there is no reason to discard or disbelieve his statement.

14. The statement of Sachin prima facie reveals that on

12.7.2015 at about 11.15 hours, he had seen that the applicant herein along with the other co-accused Saurabh and Nilesh had made one person sit on the motorcycle driven by the present applicant, and that they had proceeded towards the guest house. The statement of Sanjay Patil also prima facie reveals that he had seen the applicant herein throwing something in the river at Satpewadi. The statements of these two witnesses also prima facie prove the involvement of the applicant in committing the crime. Their statements cannot be disbelieved at this stage solely on the ground of delay in recording the statement.

15. The records further prima facie reveal that the applicant is involved in committing the crime which is of serious nature and which is punishable for death or life imprisonment. The gravity of the offence does not justify exercise of the discretion vested under Section 439 of Cr.P.C. Furthermore, considering the previous rivalry between the applicant and some of the witnesses, the possibility of the applicant threatening or interfering with the

witnesses and thereby hampering the trial cannot be ruled out.

16. Under the circumstances, and in view of the discussion supra, the anticipatory bail application is dismissed.

(ANUJA PRABHUDESSAI, J.)