

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

**ANTICIPATORY BAIL APPLICATION NO.111 OF 2017**

|                               |                |
|-------------------------------|----------------|
| Pandit Parshuram Modak & anr. | ... Applicants |
| Vs.                           |                |
| The State of Maharashtra      | .. Respondent  |

**with  
CRIMINAL APPLICATION NO.79 OF 2017  
IN  
ANTICIPATORY BAIL APPLICATION NO.111 OF 2017**

|                         |                 |
|-------------------------|-----------------|
| Ajinkya Shivaji Gaikwad | ... Complainant |
|-------------------------|-----------------|

**IN THE MATTER OF:**

|                               |                |
|-------------------------------|----------------|
| Pandit Parshuram Modak & anr. | ... Applicants |
| Vs.                           |                |
| The State of Maharashtra      | .. Respondent  |

**with  
BAIL APPLICATION NO.183 OF 2017**

|                            |               |
|----------------------------|---------------|
| Dattatray Bhanudas Gaikwad | ... Applicant |
| Vs.                        |               |
| The State of Maharashtra   | .. Respondent |

**WITH  
CRIMINAL APPLICATION NO.71 OF 2017  
IN  
BAIL APPLICATION NO.183 OF 2017**

|                         |                 |
|-------------------------|-----------------|
| Ajinkya Shivaji Gaikwad | ... Complainant |
|-------------------------|-----------------|

**IN THE MATTER OF:**

|                            |               |
|----------------------------|---------------|
| Dattatray Bhanudas Gaikwad | ... Applicant |
| Vs.                        |               |
| The State of Maharashtra   | .. Respondent |

Mr.Subhash Jha with Ms.Sanjana Pardeshi i/b Law Global for the Applicant in ABA/111/2017

Mr.Shiish Gupte, Sr. Advocate ib/ P.M. Patil for Applicant in ABA/183/2017

Ms.S.S. Kaushik, APP, for State in ABA/111/2017

Mr.S.S. Hulke, APP, for State in ABA/183/2017

Mr.M.S. Mohite i/b V.S. Babar for Complainant in ABA/111/2017 and ABA/183/2017

Mr.B.A. Kondubhairi, PI, Loni Kalbhor police station – present  
Mr., APP, for Respondent – State

**CORAM: Mrs.MRIDULA BHATKAR, J.**

**DATED: FEBRUARY 7, 2017**

**P.C. :**

1. The applicants/accused are prosecuted for the offences punishable under sections 143, 147, 148, 149, 302, 341, 504, 506 of the Indian Penal Code in C.R. No.1151 of 2016 registered with Loni Kalbhor police station, Pune, at the instance of one Ajinkya Shivaji Gaikwad on 19.12.2016.
2. Both the Bail Application and the Anticipatory Bail Application pertain to the same C.R. and hence, they are being disposed of by this common order.

3. It is the case of the prosecution that on 19.12.2016 at around 7.15am, the complainant went towards his company in his car. Prior to that, his father had left the house to go to work at Hadapsar, Pune. On the way, he noticed one Scorpio car coming from the village. However, he did not notice his father's mother cycle and, therefore, he went towards the hillock and then, he noticed that the said Scorpio car was parked there. The motor cycle of his father was lying aside. The applicants/accused Dattatray Gaikwad, Pandit Modak and Vivek Pandit Modak alongwith other original accused Nos.1 to 8 and the other co-accused were assaulting his father. Santosh Modak was holding sickle. Somnath Modak and Deepak Modak were armed with swords and the applicants/accused Pandit Modak and Dattatraya Gaikwad were holding iron bars and they all were mounting assaults on his father. He tried to intervene. At that time, the applicants/accused Dattatraya Gaikwad and Pandit Modak resisted him and threatened that if he would come forward, he would be eliminated and so he got scared and started running towards Baskuli Vasti area. He cried for help and he alongwith one Sachin Hanumant Gaikwad returned to the spot. At that time, the assailants had fled away. His father was severely injured. Sachin

arrived there in a car and his father was shifted to hospital. On the way, his father told him and his mother about the names of the assailants. Thereafter, his father was declared dead in the hospital. Thereafter, he approached the police on the same day. Offence was registered against all the applicants/accused and the co-accused pursuant to which the applicants/accused Dattatraya Gaikwad was arrested on the same day i.e., on 19.12.2016 and the other co-accused were also arrested. Hence, these applications for bail and pre-arrest Bail.

4. Mr.Gupte, the learned Senior Counsel appearing for the applicant/accused in Bail Application No.183 of 2017 and Mr.Jha, the learned Counsel appearing for the applicant/accused in Anticipatory Bail Application No.111 of 2017 have submitted that the applicants/accused are innocent and have not committed any offence. Their names are falsely taken by the complainant and his mother only because the applicant/accused Dattatray Gaikwad is a witness in a case under section 307 of the Indian Penal Code, where he and his father are accused. The learned Counsel further submitted that the complainant has not seen the incident and as per the report filed by the police under section 169, they have

pointed out that the real culprits are different than these applicants/accused. It is further submitted that the applicants/accused were present elsewhere than the spot of the incident. It is submitted by the learned Senior Counsel that the applicant/accused Dattatray Gaikwad had attended his duty and was in a Gymkhana and then attended his duty at the railway office and his attendance is shown as 7.27am. He was 40 kms away from the spot of the incident. Mr.Jha, the learned Counsel for the applicants/accused in Anticipatory Bail Application No.111 of 2017, has argued that the applicant/accused Vivek Pandit was in his house and the CCTV footage can be seen which is presented before the police disclosing that he was very much present and available in his house at the time of the incident. Mr.Jha submitted that the complainant has illegally implicated the applicants/accused and he should be prosecuted for the same. The learned Counsel further relied on the report under section 169 filed by the police.

5. Learned Prosecutor has submitted that they are not opposing these applications because the police have filed report under section 169 of the Code of Criminal Procedure exonerating

the applicants/accused. However, it is submitted that the report is rejected by the learned Magistrate. The learned Prosecutor submitted, on instructions, that the State is going to challenge the said order by filing a revision before the Sessions Court. The report under section 169 of the Code of Criminal Procedure alongwith the order of the learned Magistrate is placed on record.

6. The complainant has filed intervention applications in both the bail applications. Mr.Mohite, the learned Counsel appearing for the Intervener, has submitted that though the police have filed report under section 169 of the Code of Criminal Procedure, exonerating all the three applicants/accused, their role is different and the Investigating Officer in connivance with the applicants/accused and the other accused, have fabricated the case papers. The learned Counsel has further submitted that the incident of assault has taken place at 7.30am. The father was taken to hospital and thereafter, the body was taken out at around 10am and immediately on the same day, the complainant approached the police station at around 12 noon. However, in the FIR, his complaint was shown to have been recorded at around 1720 hours. This delay is shown deliberately in order to indicate

that the complainant got time for manipulation and, therefore, he falsely implicated the present applicant/accused. The learned Counsel has submitted that there was no delay and within four hours, the complainant had approached the police and there is no question of false implication of the applicants/accused.

7. The learned Counsel relied on the contents in the complaint and further submitted that the mother of the complainant *prima facie* corroborates the contents in the FIR. He submitted that in the FIR, the complainant has mentioned that he himself has seen the applicants/accused were assaulting his father and when he intervened, the applicant/accused Dattatray Gaikwad and one Pandit Modak stopped him and threatened him of his life. Further, when his father was shifted to the hospital, he was conscious and he disclosed all the names of the assailants including the names of the applicants/accused to him and to his mother. His mother has also taken all the names and has said that her husband has disclosed the names of the perpetrators. The learned Counsel further submitted that the statement of Sachin Gaikwad, who came there in a car immediately and followed the complainant, has given a statement on the same day i.e., on 19.12.2016. However, his

statement was changed and manipulated and shown as recorded on 29.12.2016, which is completely a changed version and is contradictory to the complaint. The learned Counsel has further submitted that the statements recorded by the Investigating Officer do not support the case of the prosecution, however, all these statements are damaging the case of the prosecution and it is a deliberate effort by the Investigating Officer. The learned Counsel further submitted that the defence of alibi of the present applicants/accused is put up through the statements of the other witnesses, as a systematically manipulated version. He has submitted that the CCTV footage is produced before the police to show that the applicants/accused Pandit Modak was present in his house at the relevant time of murder. However, the CCTV was installed in their house just 21 days prior to the incident of murder and the timing of the CCTV footage can be set as per the requirements and it is a very well thought and planned murder and therefore, this CCTV footage cannot be considered at this stage. He however, submitted that the house of the applicant/accused Pandit Modak is only 1½ kms. away from the spot of incident. Considering the proximity of the place of offence and his house, it was possible for Pandit Modak to commit murder and go back to



his house. He further relied on the document relied on by the applicant/accused and collected by the prosecution i.e., the time record or the register of the attendance of the applicant/accused Dattatray Gaikwad, who is in the Government service. The learned Counsel further submitted that his biometric attendance is shown as 7.27am on 19.12.2016. However, there is nothing shown to indicate when he left the premises. However, the statement of his wife discloses that at around 10am, on the same day, this person was at home and how it was possible for him when he was on duty at around 7.27am to leave the place and to go to his house again. The distance between his house and the workplace is 17kms. It was possible for him to reach the spot and go home. The learned Counsel further submitted that the defence of alibi cannot be considered at the stage of deciding bail as it can be appreciated at the stage of trial.

8. The learned Counsel further submitted that under these circumstances, the applicants for bail as also pre-arrest bail are to be rejected.

9. Considered the submissions of Mr.Gupte, the learned Senior Counsel as also the learned Counsel Mr.Jha appearing for the

applicants/accused. I have gone through the papers of investigation. A report under section 169 of the Code of Criminal Procedure is filed by the police. Therefore, *prima facie*, except the statement of the complainant and his mother, there are no other statements supporting the case of the complainant. It is a brutal murder. However, from the report filed under section 169 of the Code of Criminal Procedure, it *prima facie* transpires that the said murder is committed by accused Nos.9 to 14 and the whole machination was at the instance of Sunil @ Pappu Dattatray Gaikwad and the police have arrested all the accused Nos.9 to 14 and they are in prison. I have also perused the statement of Sachin Gaikwad who, as per the case of the prosecution, had reached on the spot. His statement speaks different that he called the complainant. I made query to the prosecution about the 10 days delay in recording of the statement of Sachin Gaikwad. The learned Prosecutor after obtaining instructions from the Investigating Officer, informed the Court that this witness was scared and being a resident of the same village, was aware of the names of the two families and was not ready to come forward and be a witness and so he left the village. Thereafter, when he was found, his statement was recorded. I have perused the statement

of the driver of a school bus, which at the relevant time passed by the spot where the body was lying. I have also perused the statements of one school boy who is 15 years old and a lady who is addressed as Mavshi. Their statements *prima facie* show that the body was lying when they saw it.

10. Considering all the factors, I grant both the applications on the following terms:

- i) Anticipatory Bail Application No.111 of 2017 and Bail Application No.183 of 2017 are allowed.
- ii) In the event of arrest, the applicants-accused Pandit Parshuram Modak and Vivek Pandit Modak shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- each, with one or two solvent sureties in the like amount;
- iii) The applicant-accused Dattatray Bhanudas Gaikwad shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty thousand only) with one or two solvent sureties in the like amount;
- iv) All the applicants-accused shall cooperate with the

Investigating Officer and attend the concerned police station as and when called.

v) The Applicant-accused Dattatray Bhanudas Gaikwad shall not enter the jurisdiction of Loni Kalbhor police station, District Pune, for a period of nine months from today and the applicants/accused Pandit Parshuram Modak and Vivek Pandit Modak shall not enter the jurisdiction of Loni Kolbhor police station, District Pune for a period of six months from today, without the permission of the Court or unless they are called by the police to attend the police station;

vi) The applicants/accused shall not tamper with the evidence or pressurise the complainant or any witness;

vii) The applicants-accused shall not indulge into any criminal activity;

viii) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish their addresses to the Investigating Officer alongwith documentary proof of his address.

xi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

11. Both the Anticipatory Bail Application and the Bail Application are disposed of on the above terms.

12. In view of the disposal of the main applications, Criminal Applications for intervention stand disposed of.

**(MRIDULA BHATKAR, J.)**