

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 343 OF 2017

Satyanarayan Madanlal Karwa & Anr.	... Applicants
Vs.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO. 231 OF 2017
IN
ANTICIPATORY BAIL APPLICATION No. 343 OF 2017**

Lalit Ghanshyam Sharma	... Intervener
in the matter between	
Satyanarayan Madanlal Karwa & Anr.	... Applicants
Vs.	
The State of Maharashtra	... Respondent

Mr. Shirish Gupte, Senior Advocate i/b. Mr. Ritesh M. Thobde,
Advocate for the Applicants.
Ms. Sharmila Kaushik, APP for Respondent – State.
Mr. Ranvir Shekhawat a/w. Mr. Jagdish Choudhary i/b. M/s. Raj
Legal, Advocate for the Intervener.
Mr. B.H. Patil, Jodbhavi Peth Police Station, Solapur City.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 15th March, 2017.

P.C.:

This Application is moved for anticipatory bail under section 438 of Cr. P.C. The applicants-accused are apprehending arrest in C.R. No. 41 of 2017 registered with Jodbhavi Peth Police Station, Solapur for the offences punishable under sections 302, 307, 506 r/w. 34 of the Indian Penal Code.

2. It is the case of the prosecution that one Hanuman Ghansham Sharma (deceased) was having some financial transaction with the applicant no. 1 and in that transaction, complainant suffered financial loss of Rs.15 lakhs and therefore, he was repetitively demanding that money from applicant no. 1-Satyanarayan Karwa. However, applicant no. 1 was avoiding to pay the money. It was the case of the complainant that applicant no. 1 avoided to pay the said amount. Again on 21st January, 2017 in the morning the complainant went to the house of the applicants/accused and demanded money, however, applicant no. 1 told him to leave the house and refused to pay the money. So, the complainant took out petrol bottle and lighter and threatened that he would burn himself if applicant no.1 is not paying him money. It is the case of the complainant that applicant no. 1 told him that he would show how to die and then he snatched the bottle of petrol and lighter from him and poured petrol on him and set him on fire. Applicant no. 1 Manoj was also present and he also participated in pouring the kerosene and set the complainant on fire. Thereafter both of them tried to extinguish the fire. The complainant sustained 80% burn injuries Both the applicants/accused and wife of applicant no. 1 have sustained burn injuries. They all were taken to the hospital. The dying declaration of the complainant was recorded on

21st January, 2017 wherein he has stated that applicants/accused have poured kerosene and set him on fire. Hence, the offence is registered under section 307 of the Indian Penal Code against the applicants/accused. The complainant succumbed to burn injuries on 31st January, 2017. Thereafter, section 302 was applied. Hence, this Anticipatory Bail Application.

3. The learned senior counsel for the applicants/accused has submitted that the applicants/accused were present in the house at the time of the incident. The complainant has arrived in their house with petrol bottle and lighter and he himself poured the petrol and set him on fire. The applicants/accused and wife of applicant no. 1 extinguished the fire to save the deceased and they also sustained extensive burn injuries. He relied on the injury certificates of these three persons and submitted that applicant no. 1 has sustained 10% burn injury, applicant no. 2 has sustained 31% and wife of applicant no. 1 has sustained 36% burn injuries. They all were admitted in the hospital for treatment and on 28th February, 2017 they were discharged from the hospital and are still under the treatment from the doctors of the private hospital at Solapur. He further relied on the photographs of the wife of applicant no. 1 and both the applicants/accused. He submitted that dying declaration cannot be

relied under such circumstances.

4. Learned APP and learned counsel for the complainant both opposed the Anticipatory Bail Application and submitted that complainant has given dying declaration. It is an Anticipatory Bail Application, hence, the Application is to be rejected. Learned APP relied on the injury certificate of the complainant who has sustained 80% of the burn injuries and also relied on the statement of the witnesses. The learned counsel for the complainant submitted that the conduct of the applicant no. 1 is also to be taken into account. The applicants/accused did not take the complainant to the hospital but they themselves went to the hospital. Hence, this Application is to be rejected.

5. Perused the FIR, photographs, injury certificates, statement of the witnesses which are relied by the learned APP. The case stands mainly on the dying declaration. In the dying declaration, the complainant has taken the names of these applicants/accused that they poured petrol on him and set him on fire. The fact that the complainant went to the house of the applicants/accused with bottle full of petrol and lighter is not disputed. Prima facie it shows that the complainant died due to burn injuries. On the other hand, the

applicants/accused also sustained burn injuries. Applicant no. 1 sustained 10% burn injuries. Applicant no. 2 sustained 31% burn injuries and wife of applicant no. 1 sustained 36% burn injuries. The statement of police officer Mr. Kasak is pointed out. It shows that he was the first who reached the spot. He noticed that the applicant/accused no. 1 was standing and the complainant was lying with burns on the floor. As the police arrived, the complainant himself stood and and talked with himself, this *prima facie* it shows that complainant was in a condition to talk. No immediate allegations of setting him on fire were made by the complainant against the applicants/accused. Generally in the offence under section 302 of the Indian Penal Code, pre-arrest bail is not granted. However, *prima facie* taking into account the manner in which the incident has occurred, the post incident evidence and facts so also the medical evidence of the complainant and that of the accused, I am of the view that custodial interrogation of the applicants/accused is not required. Hence, pre-arrest bail is granted to the applicants/accused on the following terms and conditions:

ORDER

- i) In the event of arrest, the applicants-accused shall be released on bail with the same bail bonds.

- ii) The applicants-accused shall cooperate with the Investigating Officer and attend the concerned police station on every Monday and Friday between 11 a.m. to 2 p.m. till the filing of the charge sheet;
 - iii) The applicants-accused shall not tamper with the evidence;
 - iv) The applicants-accused shall not indulge into any criminal activity;
 - v) The applicants-accused shall not abscond or leave India without prior permission of the trial Court and furnish their permanent address to the Investigating Officer alongwith documentary proof.
 - vi) 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.
6. The Application for Anticipatory bail stands disposed of on above terms.
7. Criminal Application No. 231 of 2017 is disposed of accordingly.

(MRIDULA BHATKAR, J.)