

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1779 OF 2017

Sanjay Dattatray Konde-Deshmukh

..Applicant.

vs.

The State of Maharashtra

..Respondent.

Mr. Mahesh Jethmalani ,Senior Advocate with Mr. Kamlesh Ghumore, Ms. Sonali Jadhav, Ms. Sonali Sabale and Mr. Aditya Parulekar for the Applicant.

Smt. Rutuja Ambekar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 10th October, 2017.

P.C.

1. This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No.155 of 2017 dated 14.9.2017 registered with Rajgad Police Station, Pune under Sections 304, 323, 504 and 506 of the Indian Penal Code. The record indicates that the police have subsequently added Section 302 to the present crime.

2. Heard Shri. Jethmalani the learned Senior counsel for the applicant and the learned APP. Perused the record of investigation.

3. The first information report is lodged by Mr. Rais Aziz Fakkar son of the deceased Abdul Aziz Fakkar. It is stated that deceased Abdul

Aziz Fakkar and the applicant were running their own respective commercial establishments adjoining to each other. That, there was a dispute between the parties inter-se for pretty long time and the applicant herein was insisting deceased to vacate the land on which the deceased was running hotel. The said land was belonging to Shri. Mansingrao Konde and the applicant was insisting the deceased to vacate the premises. It is stated that Abdul Aziz Fakkar had suffered a paralytic attack and used to remain sick. That, the applicant herein was aware of the said fact and despite the same, used to trouble the deceased by telling him to vacate the premises. That, on 13.9.2017, at about 11.00 a.m. when the first informant was at Kondhanpur junction, his worker Acchilal @ Vinod Rajbhar gave a call to him and informed that, the applicant has come to their plot and arguing with Abdul Aziz due to the drainage line work and was also abusing the deceased. The informant immediately rushed to the spot and saw that his father had fallen down at that place and the applicant had left the place towards his petrol pump. He immediately admitted his father in hospital, where during the treatment his father was declared dead at about 2.30p.m. In the premise, the first information report is lodged.

4. The learned Senior Counsel appearing for the applicant submitted that the allegation against the applicant is that, he slapped the deceased over the said issue of drainage line work. That, the applicant was not aware of the physical condition of the deceased and therefore,

the act of the applicant in slapping the deceased once or twice would not attract the provisions of Section 302 or 304 of the Indian Penal Code. He submitted that even in the post mortem notes, except abrasions and contusions nothing else is reported and as the Doctor could not specify the cause of death, opinion as to the cause of death was reserved. That, on 4.10.2017 the Medical Officer from the Department of Forensic Medicine, B.J. Medical College and Sasoon General Hospital, Pune has given certificate of final Cause of death as "Ischaemic Heart Disease due to atherosclerotic coronary occlusions". He submitted that the applicant cannot be presumed to be aware of the said intricate and delicate heart condition of the deceased which ultimately caused his death. He submitted that the applicant and deceased were not on talking terms and therefore, the applicant was not aware of the said delicate physical condition of the deceased. He further submitted that the death of the deceased was not caused by the injuries inflicted by the applicant and the victim had died due to heart attack and therefore, it cannot be said that it is the culpable homicide committed by the applicant. In support of his contention, he relied on the decision of the Apex Court in the case of *Mayandi vs. State represented by Inspector of Police reported in (2010) 11 SCC 774*. He therefore, prayed that the applicant may be granted pre-arrest bail.

5. Apart from the first information report lodged by the son of the deceased, the witness to the incident -Mr. Acchilal @ Vinod, in his

statement to the police has categorically stated that initially the applicant took objection to the said drainage work with the deceased and there was altercation and during the said altercation the applicant slapped twice to thrice to the deceased and when the deceased fell on the ground, even thereafter the applicant continued to beat him by hands and subsequently put his leg on the neck of the deceased. When the first informant arrived at the place the applicant left the place and went to his petrol pump. The version of the said witness is duly corroborated by injury No.1 mentioned in Column No.17 of the Post Mortem Notes. It is to be noted here that, it is the specific case of the first informant that the applicant was aware of the delicate physical condition of the deceased and despite the fact he assaulted deceased and as a result of which ultimately the deceased expired. Thus, prima facie, it appears that due to the assault of the applicant, as a consequence thereof the deceased expired. Prima facie there is sufficient material against the applicant to show his complicity in the present crime.

6. After taking into consideration the serious allegations against the applicant and the gravity of offence, this Court is of the view that this is not a fit case to grant pre-arrest bail to the applicant.

Application is accordingly rejected.

7. At this stage Mr. Jethmalani, the learned counsel appearing for the applicant submitted that the operation and implementation of the present order be stayed for a period of two weeks from today in order to

enable the applicant to test its correctness before the Apex Court. After taking into consideration the afore stated facts and the serious allegations against the applicant, the said prayer is rejected.

(A.S. GADKARI, J.)