

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1959 OF 2017

1.Priyanka Yashwant Chaudhari ...Applicants
2.Jaywanti Jaysingh Deshmukh

Versus

The State of Maharashtra ...Respondent

Mr.R.D. Suryanwanshi for the applicant.
Ms. A.A.Takalkar, APP for the State.
API Parshuram Londhe Kalyan Taluka Police Station.

CORAM: A.M. BADAR, J.
DATED: 15th NOVEMBER, 2017

PC:-

1. The applicants/accused Priyanka Chaudhary and Jaywanti Deshmukh, who are accused in Crime No.I-197 of 2017 registered with police Station Kalyan tq. for the offences punishable under Sections 302, 325, 323, 504, 506, 143, 148, 149, 427 of the Indian Penal Code at the instance of Zoya Parvez Shaikh (sister-in-law of deceased Mehendi Akabar Shaikh by this application are seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicants/accused. He vehemently argued that though the crime in question allegedly took place at about 11.45 p.m. on 6.9.2017, the FIR regarding the same came to be registered at 6.44 p.m. of 7.9.2017 by interested witness Zoya Sheikh implicating the entire family members of the accused party. The learned advocate further argued that this incident also resulted in lodging the cross FIR. He drew my attention to the FIR of Crime No.I-198 of 2017 registered at the same police station at the instance of accused Suraj Chaudhari and pointed out that this cross FIR reveals that at about 12.30 a.m. of 7.9.2017 Mehendi Shaikh (since deceased) alongwith his brother Parvez came to his house, while armed with iron rod. Pervez was holding a sword and their friend Kismat was holding iron bar. The learned advocate further argued that this cross FIR shows that Parvez and Mehendi (since deceased) as well as Kismat assaulted neighbours of Suraj Chaudhari namely, Manoj Mekhle, Raj Kankopar apart from beating first informant Suraj Chaudhari. To substantiate this

contention, the learned advocate for the applicant drew my attention to the information received under the RTI Act as well as bed head ticket of injured Manoj Baraf and OPD papers of Mahendra and Raj. With the aid of this documentary evidence, it is submitted that the incident was fall out of a free fight between two rival groups but the FIR lodged with due deliberation by the sister-in-law of deceased Mehendi Shaikh, falsely implicating all family members of the accused party including the family members of the house. It is further argued that even if the FIR is considered as it is, then also it is not seen that it indicates version of an unlawful assembly with the common object of murdering Mehendi and the present applicants were sharing that common object with the co-accused.

3. The learned APP opposed the application by contending that statement of witnesses are implicating the present applicants in the crime in question. Supplementary statements of the first informant as well as statements of witnesses are

sufficient to infer sharing of the common object apart from establishing identity of the present applicants.

4. I have carefully considered the rival submissions and also perused the entire case diary.

5. The FIR lodged by Zoya Sheikh shows that her brothers Arun, Ajay and Abhishek are residing at a distance from her house at village Mharalgaon. They used to come to her house daily for having food. The accused are neighbours of her brothers, who are residing at Malkhan compound of village Mharalgaon. The first informant had narrated the incident of some of the accused coming to her house and assaulting her brother Arun on 5.9.2017 with a reason that Arun is not providing the dumper on rent to them. First informant Zoya Sheikh further referred to the incident of 6.9.2017 which allegedly took place at 6.30 p.m. by stating that accused Suraj, Swapnil, Balya and Dokya and other co-accused had been to her house for informing her that she alongwith her husband

should leave village Mharalgaon, else her husband would be killed. Then Zoya Sheikh has stated about the actual incident of murder of her brother-in-law Mehendi Shaikh. She disclosed that at 11.45 p.m. of 6.9.2017, her brother Abhishek came to her house and told her that several persons are chasing her husband Parvez for killing Parvez after damaging his alto car near house of Suraj Chaudhari (co-accused). First informant Zoya stated that then she accompanied by her brother-in-law Mehendi Shaikh and brother Abhishek came out of the house and started running towards the road. As per version of Zoya, at that time, accused Suraj Chaudhari, who was holding an iron pipe, accused Swapnil Chaudhari holding a wooden log, accused Yuvraj Pachange holding a wooden log, accused Ravi Davenge holding a sword, accused Dokya @ Pintya holding an iron pipe, accused Subhash holding an iron pipe, Maya Chaudhari alongwith two or three unknown persons came in the direction of their house. They directed her to call Parvez and said that they should leave the village. During the course of these threats, those accused persons

started assaulting her brother in law Mehendi Shaikh by means of weapons held by them. So far as the present applicants are concerned, first informant Zoya Sheikh has stated that the applicant Jaywanti and applicant Priyanka, whom she referred as daughter of Maya had pulled her when she covered body of Mehendi Shaikh in order to save him from the murderous assault and then assaulted her by means of fist blows. First informant further averred that Priyanka snatched the wooden log from one of the assailant and assaulted her by means of that wooden log. Thereafter, two police personnels came and called Rickshaw for sending Mehendi to the hospital.

6. Statement of witnesses makes it clear that Jaywanti, who has referred to in the FIR is the applicant Jaywanti and daughter of Maya as referred in the FIR as applicant Priyanka.

7. Considering the averments made in the FIR, statements of two police personnels, who reached the spot are relevant. Both these police personnels have stated to the Investigator

what they heard from first informant Zoya Sheikh on the spot of the incident itself after making the inquiry from her. Version of both these police officials are perfectly in tune with the FIR lodged by Zoya Sheikh.

8. As there is cross FIR, the spot of the incident assumes relevance. The FIR shows that the incident in question took place near the house of first informant Zoya Sheikh and deceased Mehendi. FIR itself shows that members of the accused party were residing at a distance. The cross FIR shows that near the house of the accused party, damaged alto car and a motor cycle was found. Apart from that, neighbours of the accused party are also found to be injured in the incident which took place at that place. In this factual backdrop, if the spot panchnama is perused then it is seen that incident of killing Mehendi took place in front of house of first informant Zoya Sheikh which was being shared by him he being her brother-in-law. In front of house of first informant, Zoya, the FIR reflects that there were stains of blood. The

said spot panchnama also reveals that the Investigators had inspected the other spot which was near Malkhan Compound there Maruti Alto Car and a motor cycle was found in damaged condition. This situation prima facie reveals that the incident of killing Mehendi took place in front of his own house. First informant Zoya Sheikh was an eye witness to that incident apart from her brother Abhishek. Two police officials had immediately heard narrations of first informant Zoya Sheikh about the incident soon after the incident. This evidence consistently shows that both applicants have played role in the incident.

9. Next aspect of the matter is whether both the applicants were members of the unlawful assembly having common object of killing Mehendi. Prima facie, it is seen that initially incident of damaging the alto car and motor cycle took place near the house of the accused persons and this has resulted in the incident in question which took place at the front portion of house of the deceased. Statement of witnesses shows that

at midnight both the applicants have joined other accused persons, who were armed with deadly weapons. Statement of witnesses further shows that when first informant Zoya Sheikh tried to cover body of her brother-in-law Mehendi by lying on his body for saving him from the assault, both the applicants literally picked her up and assaulted her.

10. Brutality of the assault is reflected from the report of post-mortem examination of Mehendi Shaikh. He was done to death by literally inflicting wounds on his entire body. In all 30 ante-mortem injuries were found over his body. This prima facie indicates that both applicants were members of an unlawful assembly, members of which by leaving their house in the midnight reached the house of the victim and had done him to death in the most brutal manner.

11. In the result, no case is made out for grant of pre-arrest bail. Therefore, the application is rejected.

12. Need less to mention that the observations made herein are prima facie in nature and shall not have any bearing on the result of the trial.

(A.M. BADAR, J)