

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

ANTICIPATORY BAIL APPLICATION NO.1033 OF 2018

Yusuf Siddique Sayed & Ors.

.. Applicants

Vs.

State of Maharashtra & Anr.

.. Respondents

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Mr.Rizwan Merchant a/w. Mr.Fair Merchant, Mr.Mukesh Ahire & Mr.Akshay Bafna I/b. M/s.Rizwan Merchant & Associates, Advocate for the Applicants.

Mrs.G.P. Mulekar, APP for the Respondent – State.

Mr.Sanjay Bhupkar, PI, Antop Hill Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 30, 2018.

P.C. :

This is an application for anticipatory bail. The applicants are apprehending arrest in connection with CR No.181 of 2018, registered with Antop Hill Police Station on 5th May, 2018. The offences were registered under Section 302 and 120-B of IPC.

2 The prosecution case is that on 4th May, 2018, police attached to Antop Hill Police Station received a message from

Sion Hospital regarding unnatural death of a minor girl. The deceased girl named Ms.Mehnaz Qureshi, residing at 605, 6th Floor, Hill View Co-operative Housing Society, Antop Hill, Mumbai, was found in an unconscious condition in bathroom of her residential house. It is further alleged that the deceased girl was immediately rushed Sion Hospital for treatment by her aunt (Smt.Sabirabanu Yusuf Sayyed). She was examined by doctors and was declared dead. According to prosecution, the accused who accompanied the deceased had informed that she was found unconscious in the bathroom, however, on noticing the injuries of strangulation mark on neck, it was found that the said information was contrary to the injuries found on the body of the deceased. FIR was registered under Section 302 of IPC on 5th May, 2018. It is alleged that inquiries were made with the aunt of the deceased and other relatives staying with the deceased. Postmortem was conducted, which indicate that the cause of death of the deceased was ligature and strangulation on the neck (unnatural). It is alleged that except relatives of deceased i.e. accused no.5, none was present in the house. It was further alleged that, the accused has mislead by provided incorrect information. The accused had conspired and killed the victim by strangulation.

3 In pursuant to the registration of the FIR, inquiries were conducted with relatives of the deceased. Accused Sabirabanu Yusuf Sayyed, Miss.Umera Yusuf Sayyed (Juvenile in effect with) Smt.Soliya Salim Sayyed were arrested. Since Umera Sayyad was juvenile, she was produced before the Juvenile Court and she is being granted bail. The other arrested persons are still in custody. On completing the investigation, charge - sheet is filed against the arrested accused.

4 Learned counsel for the applicants submitted that investigation has proceeded in two different angles, as to whether the offence is made out under Section 306 or Section 302 of IPC. During the course of investigation, the steel rod, which was placed at the height of six feet in the bathroom, is also recovered by the investigating machinery. It is submitted that there is no evidence against applicants to show their involvement in the crime. The applicants have furnished details to show that applicant nos.1 to 4 were not present in the house at the time of the alleged incident. The incident had occurred in the house. Applicant no.5 is mother of applicant nos.1 and 3, she is aged about 62 years and she cannot move on account of her ailment.

She is not in a condition to undertake any kind of physical exertion and always dependent upon family even for simple mobility. In the circumstances, she was in the house. There is no cogent evidence against applicant nos.1 to 5 to show their involvement. Prosecution has allegedly implicated the arrested accused and has proceeded with the case they they were present in the house at the time of alleged incident. The prosecution case now is that the victim child was strangled by the accused. Statements of several persons are recorded. It is not necessary to scan the entire evidence and/or appreciate the same at this stage. On going through the affidavit-in-reply filed by the investigating officer, it is apparent that the case of the prosecution is that the arrested accused and applicant no.5 were in the house at the time of alleged incident. As stated hereinabove, applicant no.5 was paralytic person and cannot move. It is further stated that Smt.Sabirabanu, Ms.Umaira and Smt. Soliya had conspired to cause murder of deceased. It is also stayed that the arrested accused had conspired with applicants. It is further stated in the affidavit-in-reply that there was certain calls *inter-say* between the accused.

5 Learned counsel for the applicants pointed out

several statements recorded by the investigating machinery from the charge-sheet filed against arrested accused. It is submitted by him that the statements of the neighbours indicate that the accused was taking all the steps to resuscitate the victim when the neighbours entered the house after they heard cries from the house of the accused. The tenor of the statements indicate that when the neighbours entered into the the house of the accused, they did not notice any suspicious movement of the accused. He also pointed out the statements of father of the deceased, which were recorded on 5th July, 2018, 16th June, 2018 and 10th July, 2018. It is submitted that the said witness has improvise his version in subsequent statements. Charge-sheet also includes the statements of the friend of the deceased and her parents, which indicate that the child was not happy in the house.

6 It is submitted that custodial interrogation of the applicants is not necessary. Mr.Merchant also pointed out that the applicants had received a summons from the police that charge-sheet is to be filed against them before the competent Court.

7 Learned APP submitted that the incident had occurred in the house, the statements of various persons indicate

that the deceased child was not happy in the house, and, therefore, the applicants being the inmates of the house were responsible for the alleged crime. On instructions, she fairly submitted that the call records, which were referred to in the affidavit were exchanged after the injured was taken to the Sion Hospital. It is submitted that applicants were involved as conspirators in crime.

8 Having heard both the sides and on perusal of the documents on record, it is implicit that according to the prosecution, the arrested accused were in the house at the time of the alleged incident. There is admittedly no eye witnesses to the incident. The statements of the neighbours were recorded, which does not show any incriminating evidence against the applicants. Applicant no.5 was although allegedly in the house, is according to applicants, is a parasitic patient. Apparently, there is nothing to show that she has participated in the alleged act of strangulating the victim. The co-accused to whom the prime role has been attributed were arrested and they are in custody and charge-sheet has been filed against them. On perusal of the statements of father of the victim child, it appears that in the first statement recorded on 6th May, 2018, he has not attributed any

allegation to any of the accused, however, in the subsequent statements, he has alleged that harassment was being meted out to the deceased by applicant no.2. Applicant no.1 is the husband of arrested accused Sabirabano. Applicant no.2 is the son of applicant no.1. Applicant no.3 is husband of Soliya who is also arrested and who is in custody, applicant no.4 is the father of applicant nos.1 and 3 and applicant no.5 is the mother of applicant nos.1 and 3. Taking into consideration the totality of the circumstances and, more particularly, considering the fact that investigation appears to have been completed, charge sheet has been filed against the co-accused and even from summons dated 29th July, 2018, it appears that the investigation *qua* the present applicants is also completed, there is no necessity for custodial interrogation of the applicants. Hence, this application is required to be allowed.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.1033 of 2018,
is allowed;

- (ii) In the event of arrest of the applicants in connection with CR No.181 of 2018, registered with Antop Hill Police Station, Mumbai, the applicants be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/-, each, with one or more sureties in the like amount;
- (ii) Applicants are permitted to furnish cash security in the event of arrest, in the sum of Rs.15,000/-, each, for a period of eight weeks;
- (iii) Applicants shall not tamper with the evidence;
- (iv) Anticipatory Bail Application No.1033 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)