

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1875 OF 2018
WITH
CRIMINAL APPLICATION NO.1133 OF 2018

Ahmed Hussain Mangru Hussain Siddiqui,
Age 41 years, Occ.Business and Social Work,
R/o.Reshma Apartment, Room No.644,
B-Wing, Nashik Road, 4th Nizam Pura,
Bhiwandi, Dist.Thane-421 302.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Niranjan Mundargi I/by Mr.Nitin B. Patil for applicant.
Mr.A.R.Kapadnis, APP, for State.
Mr.Rohan P. Surve for intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th September 2018

PC :

1. Heard learned counsel for parties. For the reasons stated in the application, Criminal Application No.1133 of 2018 is allowed and intervenor is permitted to intervene.

2. This is an application for anticipatory bail in CR No.II-72 of 2018 registered with Bhiwandi City Police Station under Sections 3, 25 of Arms Act and Sections 307, 115, 120(b) and 34 of Indian Penal Code and Sections 37(1) and 135 of Maharashtra Police Act.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions, which was rejected on 6th September 2018. While rejecting the said application it was observed that investigation is in progress. The accusations against the applicant are well founded and custodial interrogation is necessary. There is rivalry between both the sides and considering the alleged role played by the applicant, it will not be just and proper to release him on anticipatory bail.

4. The investigation officer has filed affidavit dated 17th September 2018 opposing grant of reliefs prayed in this application.

5. The case of prosecution is that on 21st June 2018, while police were on patrolling duty at about 2.20 am, they noticed two persons in suspicious condition who were apprehended by police and members of public. They disclosed their names as Mohammed Sajid Ansari and Danish Ansari. Initially they tried to run away. Police with the help of local public caught them and subsequently they were arrested. On their search two foreign made pistols and live bullets were recovered. Their mobile phones were also recovered. The FIR was registered against them on 21st June 2018. They were produced before the Court for remand and remanded to police custody. Subsequently they were remanded to judicial custody. Initially the investigating officer sought the custody of the arrested accused for carrying out thorough investigation as they were found in possession of arms. During the course of investigation it was discovered that they were acting in connivance with other accused Mehboob Siddiqui i.e. nephew of the applicant. It is alleged that the

co-accused Mehboob had instructed the arrested accused to kill Shaikh Mohammad Khalid Mukhtar Ahmed (Guddu) with assurances that the arrested accused would be paid Rs.1,00,000/- each for the contract killing. It was also revealed that the said persons were instructed to fire on the chest and head of the intervenor Shaikh Mohammed Khalid Mukhtar Ahmed (Guddu). The co-accused Mehboob handed over pistols to arrested accused by demonstrating functioning of pistol by firing one round. The case of prosecution that the arrested accused were acting on behalf of co-accused Mehboob and other accused and tried to kill the intervenor. It was also revealed during the course of investigation that the said arrested accused had fired with the help of pistol at the intervenor but unfortunately the trigger could not be pressed and the attempt was not successful. On the date of arrest the arrested accused were prepared to liquidate the intervenor. During the course of investigation statement of intervenor was recorded on 22nd June 2018. In the statement he has stated that in the year 2013 his mother had contested the election from ward no.5 of Bhiwandi-Nizampur City Municipal Corporation. At that time the wife of applicant had also contested the election from the concerned word and wife of other accused Alimuddin Sardar had also contested the election. The co-accused alimuddin Sardar is the relative of present applicant. It was also stated by the intervenor in the statement that the accused were involved in several illegal activities. The intervenor had lodged complaint with Shantinagar Police Station. The intervenor has helped Hamid Shaikh by taking him to the office of Deputy Commissioner of Police and subsequently directions were issued to register the offence against the accused and CR No.I-82 of 2017 was registered on 18th April 2017. It was also stated that the

applicant and others had preferred writ petition in the High Court challenging CR No.I-82 of 2017 which was opposed by Hamid Shaikh, who was respondent in the said petition by filing affidavit wherein the intervenor had assisted Hamid Shaikh. It is, therefore, alleged that there was enmity of the applicant with intervenor. Hence, all of them had motive to liquidate the intervenor. In the remand application dated 24-6-2018 it is stated that investigation has revealed that the accused are closely related to each other and they had conspired to kill Guddu. On 24-6-2018 the ACP attached to Bhiwandi City Police Station submitted report to Court and intimated that Sections 307, 120B, 115 of IPC are added to the case. Accused nos.3 and 4 were arrested on 28-6-2018. The accused were produced for remand on 29-6-2018. In the remand application it was stated that involvement of other four accused has been traced by investigating officer. Accused were remanded to police custody. Subsequently they were remanded to judicial custody.

6. Learned counsel for applicant submitted that on account of political enmity, the applicant is falsely implicated in the crime. Two persons who are arrested initially have no connection with the applicant. Admittedly they were acting at the instance of other accused. Merely on account of the fact that the applicant is related to the co-accused Mehboob who is his nephew, no inference can be drawn about involvement of the applicant in the said crime. It is further submitted that the applicant is in no way connected with the connivance of Mehboob with other accused. The wife of applicant has contested the municipal election against mother of Mehboob and also against the wife of intervenor Khalid Guddu in 2013. The said election was won by the wife of applicant and on account of political

grudge, the applicant is being victimized with a view to restrain him from contesting the forthcoming elections. It is submitted that the statement of Khalid Guddu is false and concocted. He has allegedly referred to his enmity with several persons. The applicant cannot be subjected to arrest on the basis of inferences and surmises and there is no strong evidence to link him with the said crime. As per remand application, the arrested accused were armed with weapon and were allegedly acting at the instance of Mehboob. It is further submitted that Section 307 cannot be made applicable merely on the assumption that there was a conspiracy to kill the intervenor. It is submitted that the case of prosecution that bullets were recovered from Aqsa Bakery and applicant was connected with that, is without any basis. The business in the Aqsa Bakery is conducted by one Sultan and he had appointed manager namely Rizvi Haidar. The search was conducted by removing DVR which creates doubt about the genuineness of search. The investigating authority is acting at the instance of persons who are against applicant. It is further submitted that there is no material on record to show that the applicant had at any point of time contacted accused nos.1 and 2 who are arrested by police with weapons. The mobile of applicant is handed over to the investigating machinery. The applicant is being made target continuously on account of political rivalry. The applicant is a respectful citizen. He has been contesting municipal elections of Bhiwandi-Nizampur Municipal Corporation since last fifteen years having goodwill and reputation amongst people. The opponents are trying to tarnish his image by concocting case against him. It is, therefore, submitted that custodial interrogation of the applicant is not necessary and he is ready to co-operate with the investigation.

7. Learned APP submitted that the investigation is in progress and there is sufficient material against the applicant to show his involvement. It is submitted that at this stage it is not possible to disclose all the evidence against the applicant as the investigation is in progress. It is submitted that persons who were arrested were armed with dangerous weapons. During the course of investigation they had pointed out finger at Mehboob who is nephew of applicant. It is submitted that CDR record indicate that the applicant was in touch with Mehboob on mobile phone on several occasions. It is submitted that when the calls were made to Mehboob, there were reciprocal calls made by Mehboob with other accused which shows link between all the accused. It is submitted that CDR record of Mehboob and accused nos.1 and 2 from 15th June 2018 to 21st June 2018 shows that they were in contact with each other. The investigation revealed that the applicant was also in contact with Mehboob from 15th June 2018 and 19th June 2018. It is submitted that on 25th March 2018 the search was carried out at Aqsa Bakery which is owned by the applicant. During the search two 9 mm cartridges were found. The cartridges match with one of the pistol recovered from the accused no.1 in Aqsa Bakery. One knife was also recovered and panchanama in that regard was prepared. In the affidavit filed by the investigating officer it is stated that during interrogation of the arrested accused, it was revealed that contract was given to kill Guddu Khalid in the month of Ramzan and they were supplied with two pistols. It is also submitted that further investigation revealed that the relatives of present applicant Mehboob hatched a conspiracy to liquidate Guddu Khalid on account of political rivalry. The contract was assigned to accused nos.1 and

2. It is also stated that associate of Guddu Khalid namely Abdul filed writ petition against illegal constructions carried out by applicant at Survey No.47 situated at Avchit Pada, Bhivandi, which also lead to rivalry between them. The affidavit also refers to phone calls between Mehboob and applicant from 15th May 2018 to 17th June 2018, which establish his link with the offence. The investigation is required to be carried out for which custody of the applicant is necessary. In the event applicant is released on bail, he is likely to tamper with the witnesses and hence the application may be rejected.

8. Learned advocate for intervenor adopted the arguments of learned APP and reiterated the submissions. It is submitted that the investigation has revealed involvement of applicant and anticipatory bail may not be granted to him. He had a motive to commit the said crime due to rivalry between them. The remand applications and the interrogation conducted by police shows the complicity of applicant. Hence, the application may be rejected.

9. Having heard both sides and going through the documents on record, it can be seen that the prosecution has alleged that there was a conspiracy to liquidate Guddu Khalid. The case of prosecution is based on statements of Guddu Khalid, interrogation of accused who were arrested. The co-accused Mehboob is absconding. The arrested accused were found in suspicious condition and they were armed with weapons. They had disclosed the involvement of accused Mehboob who had allegedly hired them as contract killers. The prosecution also alleges that there was an attempt made by the accused to fire at Khalid Guddu. The rivalry between the applicant

and Guddu Khalid on account of facts stated hereinabove, allegedly shows the involvement of applicant. It was also pointed out that there is recovery of cartridges from Aqua Bakery which is owned by the applicant. The allegation that there were frequent calls between the applicant and Mehboob and corresponding calls between Mehboob and arrested accused, allegedly shows involvement of applicant. Thus, at this stage, it can be seen that investigation is in progress. Prima facie, the investigating authorities have collected material showing involvement of applicant. The submission that he has been falsely implicated in this case cannot be considered at this stage. In the light of material collected by the investigating machinery, no case for grant of anticipatory bail is made out and hence the application is required to be rejected. Accordingly, Criminal Anticipatory Bail Application No.1875 of 2018 is rejected. Both applications stand disposed off.

(PRAKASH D. NAIK, J.)

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