

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2465 OF 2018

Mrs.Fairoza Salim Khan, Age 55 years,
Occ.Housewife, R/o.Room No.01,
Khairunnisha Mohd. Ishq chawl,
Behind Nikunj School, Andheri (East),
Mumbai-400 069.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Sanjeev P. Kadam I/by Mr.Bhanudas C. Jagtap for applicant.
Mr.M.G.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd December 2018

PC :

1. This is an application for anticipatory bail in connection with CR No.212 of 2018 registered with Andheri Police Station. The FIR was lodged on 16th April 2018 by Police Constable which also incorporates the dying declaration made by the deceased.

2. The prosecution case is that the deceased and the accused are neighbours. The dispute is in relation to property. The complainant after learning that one person is assaulted had reached the spot. The injured was found to have been stabbed with weapon. He was taken to hospital for treatment. The complainant had conversation with the deceased wherein he stated that there was a dispute between the injured Abdul Kayum Sayyad and Salim Nawab Khan. The said person with the help of his two sons assaulted the deceased with knife. Both the sons caught hold of the deceased to facilitate Salim

to give blows on stomach. The injured was declared dead when he was taken to hospital. The FIR was lodged under Section 302 of Indian Penal Code. During the course of investigation other accused were arrested and they are in custody. The statements of two eye witnesses were recorded on 16th April 2018. As per the version of the said witnesses, the applicant was present near the scene of offence and she had instigated other accused to assault the deceased. The applicant is alleged to have questioned the injured as to why he has filed complaints against them.

3. Learned counsel for applicant submitted that the case of prosecution, as far as applicant is concerned, is based on statements of two eye witnesses. Role attributed to the applicant is that she had instigated the co-accused. It is submitted that admittedly there were differences between the deceased and the accused. The complainant had made inquiries with the deceased and oral dying declaration is alleged to have been made to the complainant by the deceased. It is submitted that in the said oral dying declaration there is no reference to the applicant being present at the scene of offence or instigating other accused. Considering the fact that there was enmity between both the parties, the deceased would not have missed the involvement of applicant.

4. Learned APP submitted that the statements of two eye witnesses record presence of applicant as the person who has instigated other accused. The applicant has aided and abated the co-accused in commission of crime. She was instigating the co-accused to assault the injured person. The investigation is still in progress as far as present applicant is concerned.

5. I have perused the FIR and other statements recorded during the course of investigation. As far as applicant is concerned, case rests on the statements of two eye witnesses recorded by police. Admittedly there was animosity between the deceased and the accused. The other co-accused are husband and sons of applicant. There were disputes in relation to property. The tenor of the dying declaration indicate that the deceased has given detailed version of the incident. However, he has not referred to the involvement of applicant. Even her presence is not referred in the dying declaration, however, two eye witnesses have stated that the applicant was instigating other accused. Considering that there was dispute between the parties, there was animosity and the fact that involvement of the applicant is not stated in any manner in the dying declaration, the case of the applicant will have to be distinguished from other accused. The co-accused are arrested and the charge sheet has been filed against them. The role that is attributed to the applicant is of instigation and overt act of assaulting the deceased was attributed to other co-accused. The incident had occurred at the spur of moment. In the circumstances this application is required to be allowed.

6. Hence, I pass following order :

ORDER

(i) Criminal Anticipatory Bail Application No.2465 of 2018 is allowed and disposed off;

- (ii) In the event of arrest of applicant in connection with CR No.212 of 2018 registered with Andheri Police Station, the applicant be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall attend the investigating officer of Andheri Police Station once in a week on every Friday between 10 am and 12 noon till filing of charge sheet.

(PRAKASH D. NAIK, J.)

MST