

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.616 OF 2019

Santosh Sampat Jagtap & Anr.] ... Applicants

Versus

The State of Maharashtra] ... Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustomkhan i/b Mr. Prajyot Shrivastav, Advocate for the Applicants.

Mr. S.H. Yadav, APP for the State/Respondent.

Mr. Sanjeev Kadam i/b Mr. Prashant Raul, Advocate for the Intervener.

Mr. Sachin Bari, SDPO Daund, Pune Rural present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 6th AUGUST, 2019.

P. C. :-

1. The applicants are seeking anticipatory bail in connection with C.R.No.720/2018 registered with Yavat Police Station, District Pune u/sec. 302, 143, 147, 148 r/w 149, 120-B of I.P.C., u/sec. 3 r/w 25 and 4 r/w 27 of the Indian Arms Act. The applicants are brothers and they are apprehending their arrest in connection with the offence.

2. The FIR in this case is lodged on 06/08/2018 by one Vishal Shelar in respect of murder of his brother Swapnil Shelar which was

committed on 05/08/2018 at around 9.15 p.m. The FIR mentions that the deceased was taking contracts for excavation and supply of sand. In the year 2015, there was dispute between the present applicants and the deceased in respect of boundaries of sand excavation and such contracts in general. The deceased as well as the applicants had made complaints against each other. The FIR mentions that, the applicants used to threaten the deceased. They were telling the deceased not to carry his business.

3. The FIR also mentions that, the deceased had enmity with accused Mohite and Somnath Shelar. The deceased and these two persons were granted contract in the year 2016-2017. However, thereafter there was dispute between the deceased and those two persons and they were also threatening to commit his murder.

4. About 15 days prior to the incident, the deceased had told the informant that, the accused Babu Memane, Ranjit Vanjare, Somnath Shelar were planning to commit his murder.

5. On 05/08/2018 there was a programme in the house of the deceased when many persons were invited for dinner. The accused

Babu Memane, Ranjit Vanjare had attended the dinner and had left early. The accused Somnath Shelar had not attended the dinner. At around 9.00 p.m. Swapnil left the house with tiffin containing food. He told the informant that, he wanted to deliver it to somebody. The informant did not ask him details about that. The deceased left with one Sagar Bhandalkar. After about 10 to 15 minutes one Subhash Gaikwad told the informant that, one Ramesh Adangale had telephonically informed him that, the deceased was lying injured on the road. One Vilas Shelar came to the informant's house and told him that the deceased was murdered on the road in front of house of one Narayan Shelar. The informant and others went there. They saw that, the deceased was lying dead at that spot. There was one pistol lying nearby. Thereafter, the informant lodged this FIR in which he expressed suspicion against the present applicants and Babu Memane, Ranjit Vanjare, Somnath shelar, Anil Mohite and Deepak Dandavate.

6. The investigation was carried out and nine accused were arrested. The charge-sheet was filed in which the present applicants were shown as absconding accused. The charge-sheet contains statements of various important witnesses.

7. The applicants were earlier granted anticipatory bail. However, the Hon'ble Supreme Court has remanded back the matter for fresh consideration and therefore, this matter is placed before me.

8. Heard Mr. Sudeep Pasbola, Ld. Counsel for the Applicants, Mr.S.H. Yadav, Ld. APP for the State/Respondent and Mr. Sanjeev Kadam, Ld. Counsel for the Intervener. With their assistance, I have gone through the entire charge-sheet including statements of various witnesses.

9. Mr. Pasbola, in particular, invited my attention to the statements of Sujata Shelar who was widow of the deceased and Bapurao Shelar who was uncle of the deceased. Both of them had seen the actual incident of assault. Mr. Pasbola also invited my attention to the statements of witnesses Mahesh Shelke and Ravindra Jagtap. The prosecution relies on their statements to establish the theory of conspiracy.

10. Mr. Pasbola submitted that, none of these statements give a slightest indication that, the present applicants are in any way

involved in the present offence. He submitted that, the FIR itself expressed suspicion against three different groups and there is no connection between these three groups. He submitted that, since the other accused are already arrested, the prosecution cannot develop a theory that, the offence is committed at the instance of the present applicants. He further submitted that, none of the statements mentioned herein above is believable and they were recorded only to some how implicate the applicants falsely. He submitted that, the statements of these witnesses are recorded belatedly and therefore even at this stage, these statements are required to be ignored.

11. As against these submissions, Ld. Counsel for the Intervener as well as Ld. APP for the State/Respondent submitted that, all these statements mentioned herein above clearly establish the link between the present applicants and the offence of murder of the deceased Swapnil Shelar. They submitted that, the applicants were not arrested and therefore, the investigating agency has not interrogated them through custodial interrogation. They submitted that, at this stage there is sufficient material against the present applicants warranting their arrest and custodial interrogation.

12. I have considered these submissions. The statement of Sujata, widow of the deceased recorded on 08/08/2018, shows that, on 05/08/2018, in the night, the deceased had left his house to give tiffin to accused Somnath Shelar. He had told this witness to prepare two tiffins. Sujata herself was not feeling well and therefore, she requested the deceased to take her to a dispensary. The deceased told her to go with his uncle Bapurao Shelar. He said that, he would be back in a short while. Thereafter, the deceased left the house with Mayur Bhandalkar. This witness Sujata proceeded towards the dispensary with the uncle of the deceased. They were going on motorcycle. When they reached near a diversion, Sujata and uncle of the deceased saw that, the deceased was running towards house of one Narayan Shelar. Five persons were assaulting him. A pistol was lying on the road. Sujata has specifically named Somnath Shelar, Ranjit Vanjare and Vishal Memane as the three out of five persons who were assaulting the deceased. There were two more unknown persons. The deceased was assaulted with sickles. The deceased was shouting and entreating them not to assault him. At that time, the accused Ranjt Vanjare threw a big stone on deceased's head. The important part of her statement shows that, at that point when the

assault was going on, the accused Somnath Shelar shouted that nobody should take enmity with the present applicants otherwise they would meet the same fate as Pintu. Deceased was also known as Pintu. Afterwards all the assailants left the spot.

13. Her statement is corroborated by the statement of one Bapurao Shelar who was uncle of the deceased and who was taking Sujata to dispensary. He has described the incident in the same manner. The only difference in their statements is that, he does not say that the accused Somnath Shelar was shouting and taking names of the accused. There is a statement of one Mayur Bhandalkar who had accompanied the deceased when he had left his house. But deceased proceeded further and this witness had not seen the actual incident.

14. There is statement of one Mahesh Shelke which has some relevance. That statement is recorded on 18/08/2018. He has stated that, he was aware that there was enmity between the deceased Swapnil Shelar on one hand and accused Anil Mohite, Deepak Dandavate and Somnath Shelar on the other. He has also mentioned in his statement that, the present applicants were harassing the

deceased because of their dispute regarding excavation of sand in the river at Delwadi. He has further stated that, these two groups of accused i.e. Anil Mohite and others and the present applicants never used to be together. But since January 2018, this witness had seen all of them together at Kedgaon on many occasions. He has stated that, though they were never together before January 2018 and as he had seen them together regularly for four to five months after January 2018, he got impression that, they were together because of their enmity with the deceased Swapnil. He thought that, they were planning to commit murder of the deceased. Accordingly, he had informed the deceased about this fact. The statement of this witness Mahesh Shelke is also recorded u/sec. 164 of Cr. P.C. That statement is cryptic. But he has stated that, he had seen the accused together at Pargaon and Kedgaon. He had got some idea that they would cause something serious and he had apprised the deceased about this.

15. There is statement of one important witness Ravindra Jagtap. It is recorded on 19/08/2018. He knew all the other accused as well as the present applicants. He was told by the deceased that, he had dispute with accused Anil, Deepak and Somnath. He has stated

further that, in July 2018 he had gone to a Chinese Hotel near Classic Garden. At that time, he had seen Somnath Shelar, Anil Mohite, Deepak Dandavate, one more unknown person and the present applicants sitting together in the same hotel. They were discussing about deceased Pintu. He heard somebody saying that, if one of them executed the plan, the others would help him. At that time, the applicant Santosh had told Somnath Shelar that the person known as Bhushan would help him and that Somnath should contact applicant Santosh through the said Bhushan. They were discussing for about 10 to 15 minutes. While leaving, accused Anil Mohite told others that this subject of Pintu must be closed for ever. This witness had thereafter informed the deceased that, all these accused including the present applicants were planning to commit his murder and he had cautioned the deceased to take care. However, the deceased did not take it seriously. During investigation, the statement of this witness is also recorded u/sec. 164 of Cr. P.C. In that statement he has stated that, in July 2018 when he was having food at a Chinese Stall near Bharati Vidyapeeth, accused Anil Mohite, Deepak Dandavate, Somnath Shelar were standing with the present applicants and they were discussing about commission of murder of the deceased Pintu. It

is further mentioned that, Somnath was telling Anil that he should commit murder of Pintu and he would see to it that he did not remain in jail. Thereafter, this witness had informed the deceased about the talk which he had heard.

16. These are the important statements in the charge-sheet. The position that emerges from all these statements is that the widow of the deceased had specifically stated that accused Somnath was shouting that nobody should take enmity with the present applicants otherwise they would meet the same fate as Pintu. If this statement is read in the light of the statement of Ravindra Jagtap ; a clear connection between accused Somanth and present applicants is established. In July 2018, this witness Ravindra had actually heard all the accused including present applicants planning to commit murder of the deceased. The FIR and other statements show that, there was previous enmity and the present applicants had strong motive to commit murder of the deceased. Therefore, at this stage it cannot be said that, the applicants had no connection whatsoever with the planning and execution of conspiracy to commit murder of the deceased. The charge-sheet is filed against the other accused.

However, the investigating agency did not yet interrogate the present applicants by taking them in custody. This is a serious offence and it requires interrogation of the applicants. At this stage, it is not possible to observe that, the allegations against the present applicants are baseless. In view of the above discussion, the custodial interrogation of the present applicants is absolutely necessary. Therefore, no relief of anticipatory bail can be granted to the applicants. Hence, the application is rejected.

17. At this stage, Ld. Counsel Mr. Pasbola submits that the Hon'ble Supreme Court had protected the applicants from arrest after the matter was remanded back to this court. He prays that, said interim protection be extended for a few days to enable the accused to surrender. Ld. APP does not have serious objection to this request. But he prays that two days time may be granted to them to surrender. Mr. Pasbola prayed that time of two weeks may be granted. Considering both these submissions, I am inclined to grant protection for a period of seven days. Hence, the following order.

ORDER

1. Application is rejected and stands disposed of accordingly.
2. The interim protection operating in favour of the applicants is extended by a further period of seven days from today.

(SARANG V. KOTWAL, J.)