

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.93 OF 2021

SUNIL S/O FAKKAD ADSARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Rajendra S. Deshmukh, Senior advocate a/w.
Mr. Deshmukh Devang R.

APP for Respondent/State: Mr. S.W. Mundhe
Advocate for Assist to APP : Mr. N.B. Narwade

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CORAM : MANGESH S. PATIL, J.

DATE : 09.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicants is apprehending his arrest in connection with Crime No.1123/2020 Ahmednagar Taluka Police Station, Ahmednagar for the offence punishable under Sections 143, 147, 148, 149, 365, 324, 323, 504, 506, also under Section 302 and 120-B of the Indian Penal Code.

2. The FIR was registered by Omkar Babasaheb Bhalsingh on 18.11.2020 alleging that when he was proceeding on a motorcycle in the night of 17.11.2020 a car in which the accused persons including the applicant were travelling dashed his motorcycle head on. The accused persons alighted from the car, threatened him and abducted him to an unknown place in their car. It further alleges that co-accused Vishwajeet and the applicant were carrying iron rods, whereas the other accused were carrying wooden logs. They assaulted him brutally. He was then left at a deserted place. Co-accused Vishwajeet by using his phone (informant's) made a phone call to his mother and friend Balasaheb Kasar, whereupon they arrived at the scene and carried him to Pandit Hospital Ahmednagar.

While undergoing treatment he lodged the report and the offence was registered for all the above offences except Section 302 of the Indian Penal Code.

3. Subsequently he died and it was reported that he had died of head injury allegedly sustained in the incident. Consequently offence punishable under Section 302 was included.

4. The learned senior advocate for the applicant would submit that there is no nexus in the cause of death and the alleged incident. There is a time gap of around 15 days. There is no concrete record about the deceased having sustained any head injury during the course of the incident. He would point out that in the FIR while describing the parts of the body on which he was assaulted, the informant has conspicuously not mentioned about having sustained any head injury. If he has died of a head injury that cannot be attributed to the applicant and the other accused.

5. The learned senior advocate would then submit that he has instructions that there is a serious doubt as to the cause of death and in all probability the deceased has died of Covid-19.

6. The learned senior advocate would further point out from the photographs of the deceased while undergoing treatment to argue that though the deceased had sustained injuries, he seem to be in conscious state and could lodged the FIR while undergoing the treatment. Merely because unfortunately he has subsequently died, a charge of murder is now being levelled against the applicant and the accused. The applicant is ready to cooperate the Investigating Officer. His custodial interrogation is not necessary and he may be granted anticipatory bail.

7. The learned APP opposes the application and submits that the offence is serious. The order passed by the learned Additional Sessions Judge while refusing anticipatory bail to the applicant clearly reads that

there is a medical certificate specifically pointing out the cause of death as head injury. It even rules out the death having been caused by Covid-19.

8. The learned APP would further submit that there are specific and precise allegations in the FIR attributing role to the applicant. It is a matter of premeditation. The deceased was intercepted while proceeding on a motorcycle by knocking him down head on. He was subsequently abducted and brutally assaulted. Considering the specific role attributed to the applicant his custodial interrogation is necessary and the application may be rejected.

9. I have carefully gone through the papers and the order passed by the learned Additional Sessions Judge.

10. True it is that the FIR does not speak about any head injury having been sustained by the informant. It is also true that going by the medical certificate, he has died of head injury and not by Covid-19. It is equally apparent that the deceased was in a conscious state while lodging the FIR and has succumbed after about 15 days. Needless to state that it is only at a full fledged trial that any nexus, if at all, between the incident, injury sustained in that incident and the caused of death can be established.

10. However, even if one ignores the charge of murder, going by the allegations in the FIR, because of some animosity the informant was given a dash head on. There is every room to believe that it was a matter of formation of an unlawful assembly with a common object of assaulting him. Pursuant to such an object he was subsequently abducted and was assaulted with iron rods and wooden logs. It is therefore clearly a case of abduction and assault pursuant to a conspiracy hatched by the accused persons of which the applicant was *prima facie* a member. His name appears in the FIR and even a role is attributed to him.

11. Considering the gravity of the crime, bearing in mind, the aforementioned facts and circumstances the applicant is not entitled to anticipatory bail. The application is rejected.

(MANGESH S. PATIL, J.)

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