

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
906 ANTICIPATORY BAIL APPLICATION NO.713 OF 2021

TIPYA@ AKASH ASHOK BEG
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Niteen V. Gaware
APP for Respondents: Mr. V.S. Badakh

with

ANTICIPATORY BAIL APPLICATION NO. 734 OF 2021
HEENA W/O., TANVEER SHAHA
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.G. Shinde
APP for Respondents: Mr. V.S. Badakh

with

ANTICIPATORY BAIL APPLICATION NO. 975 OF 2021
CHANYA @ SAGAR ASHOK BEG
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Z.H. Farooqui
APP for Respondents: Mr. V.S. Badakh

with

ANTICIPATORY BAIL APPLICATION NO. 1019 OF 2021
SUDHIR ARUN KALOKHE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A.K. Bhosale
APP for Respondents: Mr. V.S. Badakh

CORAM : PRAKASH D. NAIK J.

DATE : 22ND OCTOBER, 2021.

PER COURT:

1] The applicants in all these applications are seeking pre-arrest bail in connection with Crime No. 359 of 2021 registered with Shrirampur City Police Station, Taluka Shrimapur, Dist. Ahmednagar for the offences punishable under Sections 143, 147, 148, 149, 307, 308, 427, 504, 506 of IPC r/w. Section 3(25) of the Arms Act.

2] The FIR was registered on 10.6.2021 by Heena Tanwir Shah. It is alleged that on 10.6.2021, at about 2.00 p.m, the complainant and her husband were standing in front of their house. The other relatives were in the house. Accused came to the spot in three four-wheelers. They alighted from the vehicle Sagar @ Chanya Beg, Tipya Beg, Sonya Beg, Lakhan Makhija, Sudhir Kalokhe, Gorya Jedhe and 5 to 6 other persons got down from the vehicle and ran towards the house of the complainant. Chanya Beg and Tipya beg were holding revolvers, sword and iron rod. Chanya Beg pointed out pistol on the head of the complainant and threatened him. He was questioned on the ground that he is associated with Arjun Dabhade. Hearing the commotion, the family members came out of the house. Due to their intervention, the accused ran away from the spot. Husband of the complainant managed to escape from the spot. He was chased by the associates of Chanya. They could not accost him. Persons accompanying Chanya Beg broke the door of the house of complainant open and pelted stones. Tipya Beg stated that they have been released from offence of MCOCA case and murder. The complainant can take whatever steps and their advocate would get them released. He threatened the complainant and others of dire consequences by stating that if they want to intervene, they would be killed. Although the help was sought from the neighbours, nobody came forward to help them. People from the area had closed their shops and houses. People on the road started running helter-skelter. Chanya Beg and associates then left the place. The complainant further alleged that Chanya Beg and his associates are not gainfully employed. They have formed a gang and for unlawful gains, they indulge in terrorizing people and committed offence by

forming gang. They have earned huge property by indulging in such activities. Several offences were registered against them.

3] The applicants in all these applications preferred applications under section 438 of Cr.PC before the Court of Sessions. Their applications have been rejected.

4] The learned advocates representing respective applicants submitted that the FIR is concocted. The allegations are absolutely false. There was no incident of assault. No one is injured. The contents of the FIR are imaginary. The wordings used in the FIR would indicate that the investigating agency was preparing invocation of the provisions of MCOCA Act. The parties have resolved their dispute. Affidavit was filed before the Court of Sessions as well as before this court by the complainant in respect of the reliefs sought by the applicants in these applications.

5] It is submitted that applicants in ABA 734 OF 2021 were acquitted in MCOCA case and all other cases. The applicants in ABA 1019 of 2021 are not having criminal antecedents. The applicants in ABA 975 OF 2021 is on bail in the case registered under the provisions of MCOCA Act. Custodial interrogation of the applicants is not necessary.

6] The complainant is represented by the advocate and he has supported the application. It is also submitted that the applicants have preferred an application for quashing the proceeding before the Division Bench of this court on the ground that the parties have resolved the dispute and the said petition is pending. The complainant has also filed affidavit in support of the applicant/accused in the quashing proceeding.

7] The learned APP submitted that the offences are of serious nature. The manner in which the offence is committed does not entitle them grant of

relief under Sections 438 of Cr.P.C. Anticipatory bail cannot be granted to the applicants on the ground of settlement between the parties. It is submitted by learned APP appearing in both the applications that the cases were registered against Akash @ Tipya Ashok Beg for various offences including the offence under Section 302 of IPC. Five cases against Sonya @ Jayprakash Beg for various offences including 302 and 307 of IPC were registered. 3 cases were registered against Sagar @ Chanya Ashok Beg under Section 307 and 302 of IPC. 3 cases were registered against Gorakh @ Gorya Jedhe including offence under Sections 302, 307 of IPC. Three cases were registered against Lakhan Makhija which includes offence under Sections 302 and 307 of IPC. One case is registered against Sudhir Arun Kalokhe under Section 324 and 323 of IPC. The incident is of serious nature. It is submitted that several offences were committed by the applicants in furtherance of common intention. The claim of the applicants that they have resolved the dispute cannot be accepted. Affidavits filed by the complainant before the Sessions Court as well as this court are mis-conceived. Such affidavits cannot be considered for granting relief. The Sessions Court, while rejecting the applications for anticipatory bail has dealt with the affidavits filed by the complainant and by assigning reasons, the applications were rejected.

8] I have perused the FIR and other documents relied upon by the applicants as well as the report filed by learned APP with regard to investigation. The list of criminal antecedents against the applicants is filed no record. I have also perused the affidavits filed by the complainant before the Court of Sessions as well as before this court, supporting the applications.

9] The FIR categorically refers to the manner in which the accused have committed the offence. The complainant has narrated the incident in detail and situation at the relevant point of time when the incident had occurred. The accused had arrived in vehicles. They were armed with weapons. Pistol was pointed out at the head of the complainant. Terror was

created in the mind of the complainant and the other witnesses as well as the people in the vicinity. It is pertinent to note that against some of the applicants, serious cases were registered in the past. The case of the prosecution is that they are involved in several cases. They have committed offences as a member of crime syndicate. Surprisingly, the complainant in the affidavit has taken a “U-turn” and has denied the contents of the FIR. In the affidavit filed before the learned Sessions Judge, the complainant has stated that on 10.6.2021, the offences is registered vide Crime No. 359 of 2021 against accused Sagar @ Chanya Beg, Tipya, Sonya, Lakhan, Sudhir, Gorya and 5 to 6 persons mentioned in the FIR. However, she has no grievance against said accused. On account of enmity and mis-understanding between the parties and the circumstances, police have taken an undue advantage of the situation. She was called at the police station and her signatures were obtained. She has no complaint of whatsoever nature against the accused. She did not lodge complaint at the police station. Such incident had not at all occurred. She did not lodge any complaint with the police. She has no objection if the accused are granted bail.

10] The contents of the affidavit are absolutely contrary to the contents of FIR. It is pertinent to note that FIR was lodged on 10.6.2021 and for the first time, by filing affidavit the complainant has alleged that the police have registered a false FIR. The conduct of the complainant is shocking. She has tried to blame the police authority who has registered FIR on her statement. The FIR indicate the manner in which the accused have committed the offence. The details were provided by the first informant. Now she has backed out from the contents of the FIR. On the basis of such affidavit, anticipatory bail cannot be granted to the applicants on the ground that the parties have resolved the dispute.

11] I have also perused the affidavit filed before this court by the complainant. Surprisingly, even in this affidavit filed before this court, it is

stated that the complainant is having cordial relations with the accused. The accused are known to her and due to misunderstanding police authorities have compelled her to report the crime against the applicants. The allegations are cooked up by the police authorities due to personal enmity. She is not having any grievance against the applicants. She will not raise any claim petition/damages against the applicants. It is decided that the disputes are settled amicably. She has no objection for grant of relief to the applicants in this application.

12] The contents of this affidavit would indicate that it is not only that the dispute is resolved but the complainant states that the incident is cooked up by the police on account of enmity between the parties. It is relevant to note that the complainant had claimed enmity with the accused. The FIR indicates that it was read over to the complainant and admitted to be correctly recorded by the police. The investigating agency has placed on record the FIR recorded in discharge of their duties. It is difficult to accept that the police have cooked up or concocted the FIR. The complainant is now denying the contents of the FIR, which is not permissible.

13] Considering the nature of the offence, criminal antecedents and the circumstances enumerated hereinabove, the reliefs sought in this application cannot be granted. Hence, the order.

: ORDER :

[i] Anticipatory bail application Nos. 713/2021, 734 of 2021, 975 of 2021 and 1019 of 2021 stand rejected.

[ii] At this stage, learned counsel for the applicants submits that the applicants were granted interim protection on 17.8.2021. The applicants propose to challenge this order before the Apex Court and hence, interim protection granted earlier may be continued for a period of 3 weeks. Prayer is

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opposed by the prosecution. Considering the fact that the applicants intend to challenge this order before the Apex Court, the interim relief granted earlier is continued for a period of 3 weeks.

[iii] The applications stand disposed of in aforesaid terms.

[PRAKASH D. NAIK]
JUDGE

grt/-