

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1012 OF 2021

Anil Janardhan Gavade ...Applicant

Versus

The State of Maharashtra ... Respondent

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Advocate for the Applicant : Mr. N. B. Narwade
APP for the Respondent – State : Mrs. V. S. Choudhari

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CORAM : V. G. BISHT, J.

RESERVED ON : 20th SEPTEMBER, 2021
PRONOUNCED ON : 22nd SEPTEMBER, 2021

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PER COURT :-

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 286/2021, registered with Rahuri Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 120-B, 212, 363, 364, 341, 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that informant husband, namely, Rohidas Radhuji Datir (since deceased) was a

journalist. On 06.04.2021 at about 08.00 a.m. deceased on his scooty started for Rahuri. At about 12.30 p.m. one Sambhaji Warale friend of husband of informant (deceased) rang up informant and informed that while the deceased was returning he was forcibly taken away in a Scorpio vehicle near Keshar Mangal Karyalaya by an unknown person. The informant accordingly rushed and found Scooty vehicle and chappal of deceased on the spot. She accordingly lodged the First Information Report.

3. Mr. N. B. Narwade, learned counsel for the applicant, submits that the F.I.R. is lodged against some unknown persons. It is during the course of investigation and on the basis of statements of prosecution witnesses, namely, Ravindra Abasaheb Kale and Abasaheb Tukaram Patil that the applicant came to be arraigned as accused. According to learned counsel for the applicant there is no direct or circumstantial evidence against the applicant. His role is attributed only to the extent of harbouring offender but even that accusation is not satisfactorily established during the course of investigation.

4. Learned counsel for the applicant lastly submits that the

investigation is already over and charge-sheet has been filed. Now, therefore, custodial interrogation of the applicant is not at all required and therefore, he deserves to be released on anticipatory bail.

5. Mrs. V. S. Choudhari, learned APP for the Respondent – State, on the other hand, submits that the deceased was murdered by accused Nos. 1 to 4 as named in the F.I.R. As far as the role of present applicant accused is concerned, despite knowing that the deceased has been murdered by accused Nos. 1 to 4, the applicant harboured them and facilitated commission of offence. There being no merit in the application, same is liable to be rejected, argued learned APP.

6. Admittedly the F.I.R. was lodged against unknown person (s). It is also clear from the record that the charge-sheet has been filed.

7. I have carefully gone through the charge-sheet. The concluding part of the charge-sheet shows that after accused Nos. 1 to 4 had committed the offence in question and they were harboured by the applicant. The applicant also helped them financially and allowed them to abscond in his vehicle.

Therefore, he came to be charged under section 212 of the IPC.

8. I have also gone through the statements of material witnesses, namely, Ravindra Abasaheb Kale and Abasaheb Tukaram Patil. The statement of Ravindra Abasaheb Kale shows that on 06.04.2021 accused No. 1, namely, Kanhu More visited his house at about 5.30 p.m. in a Scorpio vehicle of white colour bearing No. MH-17-AZ-5995. There were three other persons as well. They all were in hurry. Kanhu More then asked this witness to drop them in his vehicle at village Maka, Taluka Newasa. On way to village Maka accused Kanhu More revealed to this witness that a journalist from Rahuri was lifted by them and assaulted on his leg by means of a stone. When this witness enquired about other three persons accused Kanhu More did not reveal their identity.

9. The statement of this witness then shows that on 07.04.2021 at about 10.30 a.m. Aka Patil rang up and informed that in the previous night accused Kanhu More and one person by name Gavade had been to him. He was also told by accused Kanhu More that they had broken one leg of a journalist.

10. The above statement of Ravindra Abasaheb Kale nowhere clarifies the role of the applicant nor his identity. It is only on next day i.e. on 07.04.2021 he was told by Aba Patil i.e. another prosecution witness that accused Kanhu More and one Anil Gavade had been to them informing him that they had broken a leg of a journalist. Therefore, the statement of Abasaheb Tukaram Patil becomes more important.

11. The statement of Abasaheb Tukaram Patil shows that on 06.04.2021 accused Kanhu More along with applicant had been to his house at about 10.30 a.m. Accused Kanhu More told this witness that they want to go to Solapur and therefore, he arranged the vehicle on rent and after dropping the accused Kanhu More at Solapur this witness returned. His statement then shows that on 07.04.2021 at about 10.30 a.m. he came to know from one Ravindra Kale that accused Kanhu More had been to his house and told that he and his companions had broken a leg of a journalist from Rahuri.

12. The statement of Abasaheb Tukaram Patil also does not in any manner further the case of prosecution except to the extent that present applicant had been to his house alongwith

accused Kanhu More.

13. The above referred statements nowhere even remotely show that the applicant was having any knowledge as to the murder of deceased at the hands of accused Nos. 1 to 4 as alleged. The statements also do not throw light on the aspect that applicant was having the knowledge in respect of the crime committed by the other co-accused to whom he had taken from village Maka.

14. It is pertinent to note here that although the second witness, namely, Abasaheb Tukaram Patil went along with accused Kanhu More and applicant but he was tellingly silent as to whether during the entire journey accused Kanhu More discussed about Anil Gavade having knowledge in respect of commission of crime in question. Rather the statement of Abasaheb Tukaram Kale shows that he came to know from Ravindra Kale about the offence in question. He does not say anywhere that the name of applicant was also taken by accused Kanhu More.

15. Learned APP also, on his part, could not point out from the material on record as to the fact that the applicant was having knowledge of commission of offence at the hands of

accused Nos. 1 to 4. *Prima-facie* the applicant has made out a case for consideration.

16. In view of above, I am inclined to allow the application.

Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicant - Anil Janardhan Gavade herein in connection with Crime No. 286/2021 registered with Rahuri Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 120-B, 212, 363, 364, 341, 34 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only], with one or two sureties in the like amount.
- (iii) The applicant shall attend concerned police station as and when called by the Investigating Officer.
- (iv) The applicant shall not tamper with the prosecution evidence in any manner.
- (v) Application is accordingly disposed of.

**(V. G. BISHT)
JUDGE**

shp/-