

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 ANTICIPATORY BAIL APPLICATION NO.1141 OF 2021

AMOL VITTHAL SAVATSARKAR
BAPU GORAKH SAVATSARKAR.
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. A.M. Gaikwad, h/f. Mr. Niteen V. Gaware
APP for Respondents: Mr. S.B. Narwade.

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CORAM : PRAKASH D. NAIK J.

DATE : 26TH OCTOBER, 2021.

PER COURT:

1] The applicants are seeking pre-arrest bail in connection with Crime No. 174 of 2021 registered with Kopargaon City police station, Dist. Ahmednagar for the offences punishable under Section 302, 323 r/w. 34 of IPC.

2] The FIR was registered on 5.6.2021 against the applicants and two other persons viz. Machhindra Savatsarkar and Suresh Dadare. The FIR was lodged by the Police Naik attached to the aforesaid police station. According to complainant, the information was received on 3.6.2021 that one person who was roaming in suspicious manner is being apprehended in Shingnapur village. On receipt of the said information, the complainant and other policeman had visited the spot. He noticed that one person

was apprehended by the member of public. He also found some injuries on his person. The complainant tried to have conversation with him. He could not make conversation as apparently, he was talking in Bengali language. The injured was taken to the hospital for treatment. The person knowing Bengali language was summoned and he tried to have conversation with the injured. It was disclosed that injured was from West Bengal. The victim was giving evasive answers. While taking treatment, he died on 4.6.2021. ADR No. 27 of 2021 was registered in accordance with the provisions of Cr.P.C. and the police were directed to conduct further investigation. The complainant and others started making enquiry as to who has assaulted the victim. They proceeded to the village where the victim was found in injured condition. Enquiry was made with Macchindra Sanvatsarkar and Suresh Dadre (accused Nos. 1 and 4). They disclosed that on 3.6.2021, they heard dogs barking at about 3.30 a.m. and they also found one person roaming in the area in suspicious condition. They suspected him to be a thief and tried to apprehend him. The said person picked up a spade lying at the place and assaulted Suresh Dadre, by giving blow of the spade. Suspecting that the person was a robber, the said two persons and applicants caught him. He was assaulted by fist and kick blows. Accused No.1 assaulted him with stick and set him free. Thereafter again, said person was found roaming in the area and he was caught by the accused. He was questioned as to why he did not leave the

place. He tried to have conversation with them. The victim tried to attack the accused and information was given to the police about it.

3] The applicants preferred application for anticipatory bail before the court of sessions, which has been rejected vide order dated 19.6.2021.

4] The learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. They were not involved in assaulting victim. Assuming the allegations to be true, there was no intention to commit murder. They were not armed with any dangerous weapon. The victim was purportedly assaulted with stick and fist/kick blows. The FIR and other documents refer to the fact that victim was roaming suspiciously at wee hours. The villagers had noticed him roaming in the village in the dead night and suspecting him to be a robber. The FIR also discloses that on questioning the victim he had assaulted one of the accused with spade. His language was not understood as he was talking in Bengali. Prosecution is relying on the statement of accused themselves who had allegedly disclosed that the victim had been assaulted under the belief that he was a thief roaming in the area at night.

5] Learned APP submitted that the accused had no right to take law into their hands. Victim was mercilessly assaulted which has

resulted in his death. The Post-Mortem report refers to injuries on his person. Offence under Section 302 of IPC is made out. The witnesses support the prosecution case. The accused had confessed that they were involved in assaulting the victim.

6] I have perused the FIR and the investigation papers. The FIR proceeds with the version that information was received about person being apprehended by the villagers suspecting him to be thief. There are no eye witnesses to the incident. The victim was taken to the hospital for treatment by the complainant. Services of the person knowing Bengali language were sought and he tried to strike conversation with the victim. Apparently, the victim could not express himself even in Bengali language to the translator. He succumbed to the injuries. Police did not register FIR immediately after the incident. ADR was registered after the death of the victim. Surprisingly, the complainant has stated that the enquiry was made with the accused themselves and they have disclosed their involvement as persons, who had assaulted the victim under the belief that he is a thief who has entered in the village during the night. The FIR included the version of the accused that they had assaulted the victim suspecting him to be thief and when they questioned him he tried to assault them. It appears that there was a communication gap between the victim and assailants. The FIR indicate that the villagers had given intimation to the police about the fact that the victim had been apprehended. The police had

reached the spot. The version reflected in the FIR that victim tried to assault one of the accused is corroborated by the injury certificate of accused Suresh Dadre, which refers to history of assault by spade on 3.6.2021 at about 3.30 a.m. The injury certificate was issued by the Rural Hospital, Kopargaon. The accused Macchindra Savatsarkar had also suffered injuries and he was advised CT Brain. Statements of Bhima Savatsarkar and Prashant Adhav were recorded. They have stated in their statement dated 5.6.2021 and 4.6.2021 that enquiry was made with the accused and they have disclosed that the victim was assaulted suspecting that he is thief. The Post Mortem report shows the injuries sustained by the victim. The prosecution case itself is based on the fact that the victim was assaulted under the belief that he was thief. The accused were not armed with any dangerous weapons. The victim was allegedly questioned. It is apparent that there was conversation between both the sides. Prima facie, assuming the facts as alleged by the prosecution to be true, there was no intention to kill. The case of the prosecution proceeds on the basis of statements made by the accused themselves which forms part of FIR.

7] In the light of the aforesaid factual aspects , case for grant of anticipatory bail is made out. Hence, the order.

ORDER

[i] Anticipatory Bail Application No. 1141 of 2021 is allowed.

[ii] In the event of arrest of the applicants in connection with Crime No. 174 of 2021 registered with Kopargaon City Police Station, Dist. Ahmednagar, the applicants be released on bail on furnishing PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount.

[iii] The applicants shall appear before the I.O. on 8th, 9th and 10th November, 2021 between 11.00 a.m. and 1.00 noon and thereafter as and when called for till filing of charge sheet.

[iv] The anticipatory bail application stands disposed of accordingly.

[PRAKASH D. NAIK]
JUDGE

GRT/-.