

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.479 OF 2021

Shoaib Mustak Sayyed

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Mahesh V. Rawool, Advocate for Applicant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th MARCH, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.13/2019 registered with Yerwada Police Station, under sections 302 r/w 34 of the Indian Penal Code and under sections 25, 27 of the Indian Arms Act and under sections, 135, 37(1) of the Maharashtra Police Act.

2. The FIR is lodged by one Sachin Subhash Devkar. He has stated that his brother Sandeep was working in a security company as a supervisor. He did not have fixed hours of work.

On 05/01/2019 between 07.30 p.m. to 08.00 p.m. there was a quarrel between Sandeep and one Ganesh Borkar. Because of that quarrel Ganesh had called his friend Javed Sayyed. Both of them had abused and threatened Sandeep. On that occasion, the local residents had pacified the parties and therefore Sandeep had not lodged his FIR.

3. On 06/01/2019, at around 06.00 p.m. the informant's brother Sandeep had left his house on a two wheeler. After some time the informant's wife told the informant telephonically that somebody had assaulted Sandeep near ward office. The informant reached there. He saw that there was crowd and Sandeep was lying in injured condition having suffered bleeding injuries. The informant was told by the bystanders Chetan and others that Sandeep was assaulted by Ganesh Borkar and his associates and one of them had fired at him. Injured was removed to hospital. There he was declared dead on admission.
4. Heard Mr.Mahesh V. Rawool, learned counsel for the Applicant and Mr.H.J. Dedhia, learned APP for the State.

5. Learned counsel for the Applicant submitted that there was no mention of the present Applicant's name in the FIR. The charge-sheet is filed against co-accused and in that charge-sheet there is no evidence against the present Applicant. There is some vague reference to his name in the remand application dated 22/01/2019, in which the Applicant is shown as absconding accused.
6. Learned APP relied on two statements of Rohan Lokhande and Mahesh Nigade, and contended that Applicant is also involved in the present offence and therefore his custody is necessary.
7. I have considered these submissions and in particular I have perused statements of Rohan Lokhande and Mahesh Nigde. First of all Rohan's statement refers to the name as 'Shoaib Shaikh'. The Applicant's name is 'Shoaib Sayyed'. Thus, it does not point to the identity of the present Applicant himself. Rohan has stated that on 05/01/2019 at about 09.30 p.m. he came to

know that there was some altercation between the deceased Sandeep and Ganesh Borkar. Sandeep and Viju Nanavare had picked up quarrel with Javed. Rohan came to know that Javed and his friends had gathered at Sanjay Park. He went there. He saw that Javed was accompanied by 50-60 others. He has named 12 of them and there is reference to the name 'Shoaib Shaikh'. That time Javed was telling Ganesh that Sandeep must be killed. After that, everyone left the place. Rohan has further stated that after everyone left, he, Ganesh Chaugule, Vishal Kamble and others waited there. On 06/01/2019 at about 12.30 p.m. Ganesh called him to Chandrama Hotel. He went there. He saw Ganesh, Vishal, one 'Shoaib', Vasim, Rashid, Mahesh present there. Then they came near Vagheshwar Dairy. On that occasion, Ganesh followed him inside the compound. Vishal Kamble, Rohit Koli and Mayur Suryawanshi waited outside and ran away after hearing shouts. That means even person shown as 'Shoaib' did not follow the deceased in the compound. He was not part of the group of assailants. He was waiting outside with Rohan and he also ran away like Rohan. Therefore there is no difference

between the role of Rohan and role of 'Shoaib'. Rohan is shown as a witness and not as an accused. So this statement is not against the present Applicant.

8. The other statement of Mahesh describes the incident dated 05/01/2019, when there was altercation between Ganesh and the deceased. At that time, allegedly Javed, the present Applicant and Ashraf came there. At that time, Ganesh was beaten and Javed took offence. After some time Javed called Ganesh and others to Sanjay Park. There this witness Mahesh saw Javed and 70-80 other boys. There Javed told Ganesh that Sandeep should be murdered. After some time everyone dispersed.

9. Significantly, this witness has not taken the Applicant's name as one of the persons who was present when Javed uttered his intention to commit murder of the deceased. Subsequently this witness has described as to how Sandeep was chased by Vishal, Ganesh and Ashraf. Even on this occasion, the Applicant's name is not mentioned.

10. Considering these submissions, the prosecution case does not show anything against the present Applicant indicating his involvement. He is not even shown as a participant when the conspiracy was hatched. Particularly, from these two statements, there is absolutely no evidence against the Applicant. Even the co-accused in their statements u/s 27 of the Evidence Act, have not named the present Applicant. Thus, at this stage, the investigating agency does not have any material against the present Applicant to connect him with the present crime warranting his custody. Therefore the Applicant deserves protection of anticipatory bail. However, further investigation is still going on and therefore if some fresh material is disclosed against the present Applicant, then the investigating agency should get an opportunity to interrogate him. Hence keeping in balance both these factors, following order is passed :

ORDER

- (i) In the event of his arrest in connection with C.R.No.13/2019 registered with Yerwada Police

Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) In case, the investigating agency comes across some concrete incriminating material against the present Applicant, they are at liberty to make an application for cancellation this order.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)