

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

ANTICIPATORY BAIL APPLICATION NO. 533 OF 2021

Ganesh Tanaji Kadam	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Subhash Jha i/b Law Global Advocates for the applicant.

Mr. Ajay Patil, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 25th FEBRUARY, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 445 of 2019, registered with Paud Police Station, under sections 302, 323, 427, 143, 147, 148, 149 of the Indian Penal Code, under Sections 4 and 27 of Indian Arms Act and Section 37(1) (3), 135 of Maharashtra Police Act. Subsequently Section 120B of Indian Penal Code is also added.

2. Heard Mr. Subhash Jha, learned Counsel for the applicant and Mr. Ajay Patil, learned APP for the State.

3. The FIR is lodged by one Mahesh Satav. He has stated that on 09/10/2019, the first informant was to get delivery of his new car. The deceased Pratik was his friend. In the year 2016, one Ganesh Dedge was murdered and deceased Pratik was an eye witness in that case. Since then he was on inimical terms with Kiran Satav and Samir Pandhare. On the date of the incident, the informant had gone to take delivery of his car. He was accompanied by his friend Pratik. They started from Chinchwad towards Lavale village. When they were travelling from Raut Wadi, Bhare Road, their car was intercepted by a tractor. From behind their car, one Santro car came. From that car five known persons and two unknown persons got down. The informant has named Kiran Satav with sickle, Samir Pandhare with sickle, Kiran Kalmkar with sickle, Mahesh Gawade with sickle, Rajit Kalmkar with sickle, as the persons who had got down from the car. They broke wind shield of the informant's car and straight way assaulted Pratik with their weapons. The informant ran away from the spot to

save himself. One of their friends went to Pratik's house and brought his father to the spot. Thereafter, all the assailants went away with their vehicle. Pratik succumbed to his injuries. On this basis the FIR is lodged.

4. Shri Jha, learned Counsel for the applicant submitted that in the FIR there is no allegations against the present applicant. He is not even named. In some statement given belatedly reference to the applicant's name is made. According to Shri Jha, the learned Sessions Judge did not apply his mind in rejecting his application. The ground mentioned in the order of rejection of bail regarding the applicant absconding for many years is not sustainable. In the previous case, the applicant had surrendered and was released on regular bail. He submitted that the fact of the accused was absconding for many days; cannot be a circumstance for rejecting the bail application of the accused. There could be many reasons for his absconding. It may not point to his guilt. He submitted that in this particular case, the

applicant's wife had won election of gramsabha of village Lavale and due to local politics, he is falsely roped in, in this offence. He further submitted that the applicant was an editor of a local daily and therefore he had enemies, as he had exposed different acts of corruption and malpractices. He submitted that there is no material in the charge-sheet filed against other accused to show applicant's involvement. He relied on the Judgment of Hon'ble Supreme Court in the case of **Raghubir Singh Vs. State of U.P.** reported in (1972), Volume 3 Supreme Court Cases, page 79 to contend that the circumstance of absconding is not a circumstance to establish his guilt.

5. Learned APP opposed this application. He submitted that a warrant was issued against the present applicant in this case on 30/9/2020. He was not available and was not found, therefore, subsequently a proclamation was issued against him by the learned Magistrate on 2/2/2021. He relied on the observations of the Hon'ble Supreme Court in case of **State of Madhya**

Pradesh Vs. Pradeep Sharma reported in AIR 2014, Supreme Court page 626 as well as in the case of ***Lavesh Vs. State (Nct of Delhi)***, reported in 2012 ALL MR (Cri) 3300, Supreme Court, to contend that once the proclamation is issued against the accused, anticipatory bail application cannot be entertained. He submitted that there was a statement of father of the deceased which is recorded immediately on the very day on which the FIR was lodged and in that statement, he has referred to an incident, when the applicant and his brother Mahesh had threatened him that they would commit murder of his son Pratik. He therefore, submitted that there was proximate cause and reason for the applicant to conspire to commit murder of the deceased.

6. I have considered these submissions. As far as merit of the matter is concerned, the statement of father of the deceased is recorded immediately on 9/10/2019. The first informant was friend of the deceased so he may not be aware of the exact nature of the enmity. The

father of the deceased was aware of this. The father of the deceased has stated in his statement that in August 2019, when he and his wife were travelling on his two wheeler, the applicant and his brother Mahesh came in a car, they stopped him and told him that because of his son, they were arrested and had gone to jail and that they would not leave his son alive. Since there was terror in the area created by the applicant and his brother, he had not lodged any complaint. On 8/10/2019, Kiran Satav and his associates assaulted the deceased Pratik.

7. As submitted by the learned APP, the main accused Kiran is still absconding. The charge-sheet is filed against the arrested accused which include call record details between Kiran Satav and applicant's brother. That has to be looked into, in the context of the threats given by the applicant and his brother to the father of the deceased in August 2019.

8. Learned APP submitted that the applicant was

absconding for three years in the earlier case in which deceased Pratik was an eye witness. Though he subsequently surrendered and was released on bail, the fact that he was absconding for three years cannot be ignored. He had surrendered after the trial was concluded against others. In this particular case also, initially warrant was issued and subsequently proclamation was also issued against the applicant. The Hon'ble Supreme Court in case of **Pradeep Sharma** (supra) in paragraph No. 12 by relying on **Lavesh's case** (supra) has observed thus:

"Recently, in Lavesh Vs. State (NCT of Delhi) 2012 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when

a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

9. Therefore, in this particular case, the history and conduct of the applicant, not in one but in two cases, will have to be taken into consideration. It is not a case of his absconding only in one case because of apprehension of arrest. This was repeatedly done by the applicant in two cases consecutively. He was not available for interrogation right from the year 2019. Today proclamation is pending against him. Observations of the Hon'ble High Court in a case of Pradeep Sharma's case and Lavesh's case are squarely applicable to this case. Even on merits, there is sufficient material against the present applicant. His custodial interrogation is

required. No case for grant of anticipatory bail is made out.

The application is rejected.

(SARANG V. KOTWAL, J.)