

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

ANTICIPATORY BAIL APPLICATION NO. 832 OF 2020

Sagar Chandrakant Ahire	... Applicant
versus	
The State of Maharashtra	 Respondent

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Mr. Aniket V. Nikam a/w Mr. Aashish Satpute, for the Applicant.
Ms. J. S. Lohokare, APP for State/Respondent.

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CORAM : SARANG V. KOTWAL, J.
DATE : 14th JANUARY, 2021

P.C. :

1. The applicant is seeking his release on anticipatory bail in connection with C.R. No. I 451 of 2020 registered at Upnagar Police Station, Nashik on 20th September 2020 under Section 302 r/w Section 34 of the Indian Penal Code and r/w Section 3(25) of Arms Act.

2. Heard Mr. Aniket Nikam, learned Counsel for the applicant and Ms. Lohokare, learned APP for the respondent.

3. The prosecution case is in respect of murder of one Nawaj @ Baba Shaikh. The First Information Report is lodged by Irfan Shaikh, who was paternal uncle of the deceased. He has

stated in his F.I.R. that on 19th September 2020 at about 9.53 p.m. the deceased called him telephonically and said that Tipya and Samir Murgiraja had fired at him. The phone was taken by somebody else from the deceased and he told the informant to reach near DGP Nagar. The informant told other relatives. They went to the spot. The nephew Baba Shaikh was lying injured at that spot. He was taken to hospital. During that time, he was conscious and he told the informant that the accused Tipya called him to Regimental Plaza on the pretext of arriving at settlement. When he went there, near DGP Nagar the accused Murgiraja had fired at him. The bullet entered his body and he was injured. While undergoing treatment, Baba Shaikh succumbed to injury and then F.I.R. is lodged.

4. The learned Counsel for the applicant submitted that even as per the prosecution case, only two accused are mentioned as offenders, namely, Tipya and Murgiraja. Actual firing was done by Murgiraja. The applicant, admittedly, was not present at the spot. He submitted that the applicant had given an application to the Police Station mentioning that on 19th September 2020 at

about 10.00 p.m. he had received call from the accused Murgiraja and at that time, he was informed that since Baba Shaikh was planning to assault Samir Khan i.e. Murgiraja, he instead fired at Baba Shaikh. This conversation was recorded in his mobile phone and the applicant was willing to produce it before the Police Station.

5. Mr. Nikam, learned Counsel for the applicant submitted that the applicant was not party to the planning and execution of murder of the deceased. He submitted that Pen Drive of such recording has already been submitted to the Police Station. He had attended the Police Station when he was on interim protection and had co-operated with the investigation. He submitted that the FIR itself mentions that the deceased had called the informant. He had only named Murgiraja and Tipya and there was no mention of the present accused.

6. The learned APP, on the other hand opposed this application and produced certain papers regarding investigation of this case. The investigation papers contain statement of one Zakiya Shaikh who was paternal aunt of the deceased. On getting

knowledge about the incident, she had immediately rushed to the spot with her husband. She met the deceased at the first instance. At that time, the deceased had told her that Tipya and Murgiraja had committed this offence and that apart from them one Arjun Piwal and present applicant had committed his murder. He was not expecting to live for long. After this disclosure, the police came on the spot and he was about to be taken hospital and at that point of time, the informant Irfan reached there, with his help he was kept in the car and then taken to the hospital.

7. Similar is the statement of one Zahid Shaikh who is husband of Zakia, who has corroborated the version and statement of his wife. Thus, at this stage, there are two witnesses who are mentioning about oral Dying declaration given by the present applicant though the actual murder was executed by Tipya and Murgiraja, the deceased himself had blamed the present applicant as one of the culprits. Apart from that, the investigation has revealed that the fire arm which was used in the offence was provided to Murgiraja by the present applicant and subsequently it was taken away and concealed by the applicant himself.

8. Therefore, at this stage of consideration of anticipatory bail, sufficient material is gathered by the investigation agency warranting the applicant's custodial interrogation. The offence is very serious and allegations are not unfounded. The applicant's custodial interrogation is necessary. Hence he cannot be protected by an order of anticipatory bail under Section 438 of Cr.PC. Hence the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)