

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2215 OF 2021

AKSHAY BABANRAO HAJARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Sujay Gangal a/w. Mr.Gaurav Gangal, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 24th NOVEMBER 2021
PRONOUNCED ON : 25th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure apprehending arrest under Section 302, 143, 147, 148, 149, 201 and 212 of Indian Penal Code (IPC) and under Sections 3, 4, 25 and 27 of the Arms Act registered vide Crime No.385 of 2021 with Police Station Khed, Pune.

AVK

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2 The informant is brother of Rahul @ Pappu Kalyan Wadekar (deceased for short). On 12th July 2021, at about 12.12 a.m., informant received a phone call from one Vilas Uttam Kedari that the deceased had been fired at Village Holewadi and therefore, he rushed only to find the deceased dead. It is alleged in the First Information Report (FIR) that accused Miling Vitthal Jagdale, Bunty Vitthal Jagdale, Mayur Vitthal Jagdale, Sachin Shantaram Patne, Tausif Shaikh and Pravin @ Maruti Thigle on account of earlier dispute and verbal altercation with Sachin Patne assaulted the deceased by firing at him and then by means of a sharp weapon and also hit on the head of deceased and caused his death. First Information Report (FIR) accordingly came to be lodged.

3 Mr.Sujay Gangal, learned counsel for the applicant, submits at the outset that the applicant is nowhere named in the FIR. It is only during the course of investigation, he came to be added as an accused and that too on the basis of Remand Report. The learned counsel also invited my attention to the Remand

Report (page 35) wherein the Investigating Officer averred that apart from the above said accused, accused Pawan Sudhir Thorat and Akshay Hajare i.e. the present applicant were also involved and accordingly sought addition of Sections 201 and 212 of IPC. According to the learned counsel, the applicant is ready to abide by any conditions which may be imposed by this Court.

4 Smt. Anamika Malhotra, learned APP, submits that there is statement of witness namely Vishal Padwal recorded under Section 164 of the Code which clearly implicates the applicant. Apart from this, there is one criminal antecedent. Investigation is in progress and in such circumstances, the applicant should not be granted the benefit of anticipatory bail.

5 Perused the FIR and investigation papers including the statement of witness namely Vishal Padwal which is submitted for my perusal today only by the learned APP.

6 Perusal of the FIR would show that name of the applicant does not figure anywhere. The learned counsel for the applicant appears to be right when he says that the applicant's name came to be included during the course of investigation and that too, at the stage of remand.

7 I have also gone through the Remand Report dated 19th July 2021 whereby the Investigating Officer sought addition of Sections 201 and 212 of the IPC on the ground that two more accused, namely, Pawan Sudhir Thorat and Akshay Hajare (applicant) are found to be involved in the said crime.

8 I have also gone through the supplementary statement of the informant which is also produced before me today only. It came to be recorded on 12th July 2021 and in the said statement informant stated that apart from the contents of the FIR, he got more information that the present applicant had driven the Celerio car having accused and had chased the deceased. However, it is nowhere made clear from which source

he got said information. Neither the learned APP was able to substantiate the source of information. So, at the moment, it is not clear on what basis the informant got further information that it was the present applicant who was driving the Celerio car which was used in chasing the deceased.

9 Coming to the criminal antecedent, in the words of the learned APP there is only one criminal antecedent. However, having regard to the material on record and the role allegedly performed by the applicant, in my considered opinion, that will not come in his way, as the applicant is otherwise entitled to the protection under Section 438 of the Code.

10 In view of above, I am inclined to allow the application on certain conditions. Hence, I pass the following order :

ORDER

1 The application is allowed.

- 2 In the event of his arrest in Crime No.385 of 2021 for the offences punishable under Sections 302, 143, 147, 148, 149, 201 and 212 of Indian Penal Code (IPC) and under Sections 3, 4, 25 and 27 of the Arms Act registered with Police Station Khed, Pune, the applicant be released on bail on executing P.R.Bond in sum of Rs.25,000/- with 1/2 surety in like amount.
- 3 The applicant shall attend Police Station Khed, Pune, as and when called by the Investigating Officer.
- 4 The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the Court or to any Police Officer.
- 5 The applicant shall not tamper the prosecution evidence.

- 6 Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- 7 The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)