

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1514 OF 2019

Mehboob Ibrahim Kherani & Anr.	..Applicants
V/s.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO.1137 OF 2021**

Shahnaz Mohammed Jafar Shaikh	..Applicant
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IN THE MATTER BETWEEN

Mehboob Ibrahim Kherani & Anr.	..Applicants
V/s.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO.542 OF 2021**

Mohammed Rafique Abbdul Sattar Sayyed & Ors. ..Applicants

IN THE MATTER BETWEEN

Mehboob Ibrahim Kherani & Anr.	..Applicants
V/s.	
The State of Maharashtra	..Respondent

Mr.Sudeep Pasbola i/b Mr.Karl P. Rustomkhan for the Applicants.

Ms.Misbaah Solkar for the Applicant in IA 1137 of 2021.

Mr.Ansh Karnawat a/w Mr.ikhail Dey i/b Dinesh Tiwari & Associates
for the Intervenors in IA 542 of 2021.

Mr.Y.Y. Dabke, APP, for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 26 August 2021

P.C.

. By this application the Applicants (Accused Nos.8 and 16), apprehending their arrest in connection with the investigation of Crime No.140 of 2019, BKC Police Station, under section 302, 323, 324,143,147,148 and 149 of the Indian Penal Code ('IPC' for short) are seeking anticipatory bail.

2. The complainant Mohhamad Rafiq Sayyed Abdul Sattar had posted a video on a social networking site claiming that the local corporator was supporting HDIL and Omkar Builders in respect of an SRA Project namely Basera Housing Society formed by HDIL and Omkar Builders. It appears that the complainant along with others including the deceased Amir Zafar Shaikh @ Babubhai had also proposed a society by name KGN Housing Society somewhere in November 2018 in the area of Bharat Nagar, Bandra (East), Mumbai. The incident in question appears to be a outcome of the rivalry/disputes between the promoters of the two societies.

3. According to the complainant on 31 May 2019 at about 22.45 hours when the complainant along with other members of the KGN Society were sitting in front of Plot No.7, Tata Colony, Bharat Nagar, Bandra (East) and were chitchatting, one Mohammed Salim, who is the husband of the local Corporator, came there along with his associates. According to the complainant Salim Qureshi accosted the complainant as to how the complainant is claiming that he (Salim Qureshi) was working as a middleman for the builders. The complainant is alleged to have asked Salim Qureshi to first see the video uploaded on the social networking site. It is at this stage that Salim Qureshi is alleged to have assaulted the complainant with fist blows. Insofar as the present applicants are concerned it is alleged that the applicant Mehboob Ibrahim Khairani was having a wooden stick while the applicant Tariq Khan @ Bapuji was having an iron rod and they assaulted the complainant on his head and right thigh. Further according to the complainant deceased Amir Zafar Shaikh @ Babubhai tried to intervene when he was taken aside and assaulted, as a result of which Amir Zafar Shaikh sustained injuries. He was taken to the hospital where he was declared dead. On the basis of such a complaint the aforesaid offence came to be registered.

4. It may be mentioned that according to the prosecution partial investigation is complete and charge-sheet is filed against the applicants and others on 4 August 2020. The Investigating Officer has reserved liberty to carry out further investigation under Section 173(8) of Cr.P.C.

5. I have heard the learned counsel for the Applicants and the learned Additional Public Prosecutor. I have also heard the learned counsel for the Intervenor namely Shahnaz Mohammed Jafar Shaikh who is the widow of the deceased and the complainant Mohammad Rafiq Sayyed Abdul Sattar and others. I have gone through the charge-sheet and the record.

6. It is submitted by the learned counsel for the applicants that the applicants have been falsely implicated and the allegations by the complainant, about an assault by the applicants is not substantiate by the medical evidence. It is pointed out that the deceased is shown to have sustained three linear abrasions on the right knee and the cause of death is shown to be primary shock following contusions, over lung, liver associated with ischemic heart disease, coronary insufficiency and alcohol intoxication (unnatural). It is thus submitted that the cause of death is not relatable to any

assault or injuries sustained by the deceased. It is submitted that the investigation is complete and charge-sheet is filed.

7. The learned counsel for the applicants pointed out that some of the accused were released on bail while the others are granted anticipatory bail by the learned Sessions Judge.

8. The learned APP submitted that the offence is serious and it is necessary for the Investigating Officer to carry out further investigation. He therefore submitted that, notwithstanding filing of the charge-sheet the applicants are not entitled for the protection.

9. The learned counsel for the Intervenors have pointed out that even where the death is accelerated on account of any act or assault by the accused, the same would come within the ambit of Explanation 1 to Section 299 of IPC. The learned counsel for the intervenors have pointed out that the Medical Officer has found contusions on the lung and liver which in the submission of the learned counsel for the intervenors are possible due to the assault. It is submitted that the applicants are also trying to threaten the witnesses and therefore would misuse the liberty and protection.

10. I have carefully considered the rival circumstances and the submissions made. The prosecution case is about an assault on the complainant and causing death of Amir Zafar Shaikh @ Babubhai. Insofar as the complainant is concerned *prima facie* the injury certificate shows, three simple injuries and the complainant was treated in the OPD. Insofar as the deceased Amir @ Babubhai is concerned, the cause of death is shown to be primary shock following contusions, over lung and liver, associated with ischemic heart disease, coronary insufficiency and alcohol intoxication (unnatural). As per column No.17 there are three linear abrasions shown to be present on the right knee of the deceased. Although on behalf of the intervenors reliance is placed on explanation 1 of Section 299 of the IPC *prima facie* there are no external injuries shown which may correspond to the internal injuries found on the lung and the liver. Partial investigation is said to be complete and the charge-sheet is filed against as many as 16 accused. Out of the said accused seven have been released on regular bail while seven others have been granted anticipatory bail by the learned Sessions Judge. The record discloses that interim protection was granted to the Applicants by this Court (Revati Mohite Dere, J.) on 4 October 2019 and is operating since then. It appears that the incident was the outcome of the rivalry between two SRA Societies.

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11. The applicants are stated to be permanent residents of Bharat Nagar, Bandra (East), Mumbai. The apprehension expressed on behalf of the prosecution/intervenors can be taken care of by imposing appropriate conditions.

12. Considering the overall circumstances, and having regard to the fact that the interim protection is operating since 4 October 2019, in my considered view, the application can be allowed.

13. It is made clear that the observations herein are essentially of a *prima facie* nature, for the limited purpose of deciding the application for anticipatory bail and the learned Sessions Judge shall not be influenced by the same at the trial.

14. In the result the following order is passed.

ORDER

(i) In the event of their arrest in connection with investigation of Crime No. 140 of 2019 registered with BKC Police Station, the Applicants shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/-

each with one or two solvent sureties each in the like amount.

(ii) The applicants shall report to the Investigating Officer on 30 August 2021, 6 September 2021 and 13 September 2021 between 11.00 a.m. to 2.00 p.m. and as and when required by the Investigating Officer.

(iii) The applicants shall co-operate with the Investigating Agencies and shall not make any attempt to directly or indirectly contact, influence, threaten or otherwise tamper with the prosecution evidence/witnesses.

(iv) In the event of breach of any of the conditions the bail is liable to be cancelled.

(v) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.

**NILAM
SANTOSH
KAMBLE**

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