

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.149 OF 2022
WITH
CRIMINAL APPLICATION NO.488 OF 2022**

Sukhdev S/o Kishanrao Garje

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.B.R. Kedar Advocate for Applicant in Anticipatory Bail
Application No.149 of 2022.
Mr.A.M. Phule, A.P.P. for Respondent-State.
Mr.V.P. Latange Advocate for applicant in Criminal
Application No.488 of 2021 for assist to APP.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 22nd FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 23rd MARCH 2022

ORDER :

1. Criminal Application No.488 of 2022 moved for assist to APP stands allowed and disposed of.

2. The applicant in Anticipatory Bail Application is apprehending his arrest in connection with Crime No.996 of 2021 registered with Pathardi Police Station, District-Ahmednagar for the offence punishable under Sections 307, 279, 337 of the Indian Penal Code and Sections 184, 177, 134(A) and 134(B) of the Motor Vehicles Act.

3. Heard learned Advocate Mr. Kedar for the applicant and learned APP Mr. Phule for the respondent – State well assisted by learned Advocate Mr. Latange for the informant.

4. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. He is severely depressed patient of Ischemic Heart Disease since last few years and therefore he is not undertaking any work of driving a vehicle. He was not present at the spot, on the contrary he resides at Shevgaon and on 27th December 2021 he attended marriage ceremony of one of his relative at Shevgaon and on the day of alleged incident i.e. on 28th December 2021 he was at village Georai Marda, Taluka-Paithan. There is absolutely no connection between the alleged crime and the applicant. It appears that the informant was having suspicion that his mother

is having illicit relations with the applicant as the applicant used to visit their house after death of father of the informant. In fact informant's father and the applicant had good relations. Applicant had given hand-loan to the informant's mother and as they want to avoid repayment of the same, therefore, it appears that false complaint has been made. The applicant was serving with police department and has retired long back. He is leading his retired life and would not think of indulging in any such activity as alleged. Applicant had never threatened the informant or his mother but he had only demanded repayment of the amount. Whatever documents those have been filed by the informant in his Application for assist to APP, cannot be believed because it is hard to think that a person who is driving a two wheeler can take selfie and record which vehicle is following him. There appears to be a concocted evidence collected against the present applicant. Custodial interrogation of the applicant is not required. The applicant is ready to abide by the terms of the bail.

5. The learned APP, well assisted by learned Advocate Mr. Latange, vehemently submitted that after filing of the First Information Report the applicant has absconded and therefore he is not entitled to get the extra ordinary relief in the nature of

anticipatory bail. Father of the informant expired on 28th July 2020. Applicant was knowing the deceased father of the informant. The applicant has an ill-eye on mother of the informant and he was warned by the informant several times but each time applicant had given threat by saying that since he is a retired police officer, he knows the law very well and he can commit murder also. Thus, he has given threat to kill the informant also. On one occasion the applicant had outraged the modesty of the mother of the informant. Grand-father of the informant was in the house and therefore, the mother could be saved. On 28th December 2021 the informant was returning on two wheeler from his college. He noticed that one Marshal Jeep bearing registration No.MH-16-E-3792 was driven in a reckless manner. The applicant was driving it and was following the informant. Informant had taken the photographs of the vehicle as well as video-graphed certain part of the incident when he fell down after the heavy dash that was given by the Marshal Jeep to the two wheeler of the informant. In order to save his life, the informant had ran to the shop which is situated adjacent to Hotel Madhuban. The CCTV installed nearby has captured the incident and the police have collected the said CCTV footage wherein the black Marshal Jeep is clearly seen. The possibility of tampering

with the evidence and giving threats again to the informant cannot be ruled out. The applicant, who has given his age as 65 years, should not indulge himself in such kind of activities. He does not deserve grant of relief which itself is in the nature of discretion.

6. At the outset, it is to be noted that the First Information Report has been lodged on 29th December 2021 at about 20.36 hours in respect of the incident that has allegedly taken place on 28th December 2021 at about 3.00 p.m. The informant has stated that his father expired on 28th July 2020 and he himself is residing with his mother and grand-father. Applicant used to visit his house even during the life time of father but the applicant was having ill-eye on the mother of the informant. Applicant had asked for sexual favour from the mother of the informant. The said fact was told to the applicant by his grand-father. When the informant was returning from college at about 3.00 p.m. on 28th December 2021 on his two wheeler, he could notice that black Marshal vehicle was following him. He says that the said vehicle has given dash to the two wheeler of the informant. Informant has taken the photographs as well as video-graphed certain part

of the incident. Thereafter CCTV footage has been collected from the place in which the informant had taken shelter for a while.

7. No doubt this Court has every reservation to infer that the situation was captured in the CCTV of the nearby shop as well as the selfie that is stated to have been taken by the informant. It is hard to believe that after the informant could have noticed that the vehicle was following him, he could take out the Mobile Phone from the place where he had kept it and thereafter done the self videography. However, the fact remains is that, at this stage the Investigating Officer has recovered the CCTV footage from the CCTV of the shop namely, Sai Traders. There is Panchnama of the extraction of or copying of the said clip from the CCTV unit. Further, the police papers show that there are statements of the witnesses stating that the driver who was driving the black colour Marshal Jeep, was bearing registration No. MH-16-E-3792. It is also to be noted that the vehicle appears to be in the name of the applicant. When any contrary report is not coming forth, then it has to be explained by the applicant as to who was driving the said vehicle at the relevant time. There are also photographs about the damage caused to the two wheeler and when independent witnesses are saying

that such vehicle was seen by them trying to run over the person of the informant, then that fact is required to be considered at this stage. When there appears to be some *prima facie* evidence in one or the other form, then this cannot be taken as a fit case to exercise the extra ordinary powers of this Court for granting relief under Section 438 of the Code of Criminal Procedure.

8. For the reasons aforementioned, the Anticipatory Bail Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]