

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.240 OF 2022

KAZI AHMED @ JAVED S/O MUMTAJ MOHIUDDIN AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Rathi, Advocate for applicants

Mr. V.M. Kagne, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 23rd MARCH, 2022

PRONOUNCED ON : 04th MAY, 2022

ORDER :

1 The applicants are apprehending their arrest in connection with Crime No.303/2021 dated 15.10.2021 registered with Kotwali Police Station, Dist. Parbhani, for the offence punishable under Section 302, 201 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.S. Rathi for applicants and learned APP Mr. V.M. Kagne for the respondent.

3 It has been vehemently submitted on behalf of the applicants

that the applicant No.1 is the brother of wife of deceased and wife of the deceased is one of the accused. It is alleged that the deceased was harassing his wife i.e. sister of the present applicant No.1 and, therefore, they had hatched up a conspiracy and committed murder of deceased Jaker Ahmed s/o Khurshid Ahmed Deshmukh. Applicant No.2 is not relative. Now the investigation is over and charge sheet has been filed. Therefore, the custodial interrogation of the applicants is not required. First Information Report has been lodged by one Zuber Ahmed s/o Khurshid Ahmed Deshmukh, who is the brother of deceased. Deceased Jaker was married to Farhadiba Fatema about 20 years ago. Dispute arose between couple and they started residing separately since last 5-6 months prior to the incident. Farhadiba was residing with children in Parbhani at a different place and even Jaker was residing in the Parbhani at a different place. Informant had received phone call at about 4.00 p.m. on 15.10.2021 that there is fire in the house of Jaker Ahmed and fully burnt dead body has been noticed. Informant went to the spot and noticed partially burnt dead body and was also noticed some portion of salt lying near the dead body and, therefore, he lodged report against unknown persons. Police arrested in all seven accused persons including the wife of deceased and then it is stated that name of the present applicants were disclosed by the co-accused. Such disclosure is not admissible in the eye of law. It is the prosecution story now that since Jaker was ill-treating his wife,

she along with the present applicant No.1 hatched up a conspiracy and other accused persons helped them. Four accused persons out of those who are arrested have been granted regular bail. It can be seen from the documents in the charge sheet that the involvement of the present applicants is only on the basis of suspicion. In the First Information Report no suspicion was even raised on the present applicants. The applicant No.1 is suffering from psychological disorder since last more than three years and he is taking regular treatment of Dr. Ruturaj Jadhav at Nanded and Dr. Siddiq Ahmed. Therefore, on the said ground also he seeks bail. The applicants are ready to abide by the terms of the bail.

4 It has also been pointed out by the learned Advocate for the applicants that the perusal of the charge sheet would show that discovery is by one Galib Yakai and a wooden stick has been discovered by him. Another discovery is by accused No.4 Abdul Tallah Abdul Salim and he has also discovered wooden stick. Same is the case with the accused No.3 Mohd. Mohsinmiyan Mohd. Mehmud. Thereafter Galib Yakai appears to have given memorandum and then discovered 02 two wheelers (scooty), which according to him, he had concealed in the house of Farhadiba. The other accused persons have also discovered the clothes which they were wearing on their person at the time of incident. Statements of witnesses have been

recorded. Statement of driver of the present applicant No.1 Balaji Pohre has been considered and it is stated that he was asked by the applicant No.1 on 13.10.2021 that they would go to Parbhani. Applicant No.1, his friend Pathan and labour on the shop of the present applicant No.1 went to Parbhani and they stayed in a hotel. It is then stated that the vehicle was stopped near one arch of Dargah. He as well as Abdul Raheman and Arshad were sitting in the vehicle, but applicant No.1 and Pathan went on the road and they returned at about 1.30 a.m. Similar statement has been given by Sayyad Abdul Raheman and Arshadshah Ashrafshah. Statements of one Advocate Sayyad Mujmmil Hashmi would disclose that there was dispute between the deceased and his wife. Identification parade had been held, however, only some of the accused persons have been identified. Therefore, with this kind of evidence the applicants' custody is not required.

5 The learned APP has strongly opposed the application and submitted that the applicants are absconding and the charge sheet was required to be produced as the period of detention of the co-accused was nearing the statutory period. It cannot be said that the investigation is complete, but whatever investigation has been done on the basis of that the charge sheet has been filed. Custodial interrogation of the applicants is necessary as their involvement is revealed in the investigation. The murder

that has been committed is brutal and only the present applicant No.1 and his sister can be said to be having motive for the commission of the offence. The Postmortem Report would reveal that in column No.17 it was noted that there was evidence of severe burns all over body with pachy charring and sooty blackening of skin with dull white underlying tissues. There was also evidence of palpable fracture of lumbosacral vertebrae-tibia and fibula (Lt.)-femoral condyle (Lt.). Even in the skull slightly depressed comminuted fracture was noted. There was also comminuted fracture on the left temporal area, vertically oblique linear fracture was noticed. Therefore, the cause of death has been stated as "Shock due to multiple injuries". Therefore, when brutal murder has taken place and there is evidence in the form of statement of witnesses telephonic communications and even in the confessional statement while discovering the articles the name of the present applicant No.1 has been taken. Therefore, further investigation is definitely contemplated. The applicants are absconding and therefore, they do not deserve any protection.

6 Almost all the necessary facts have been narrated earlier and therefore, they need not be reproduced once again. At the outset, it is to be noted that about four persons came to be arrested on 22.10.2021, accused No.5 has been arrested on 28.10.2021, accused No.6 came to be arrested on

29.10.2021 and accused No.7 came to be arrested on 22.11.2021. Therefore, under such circumstance it appears that the charge sheet was filed, however, the present applicants have been shown as absconding. No doubt, the procedure as contemplated under Section 82 and 83 of the Code of Criminal Procedure appears to have not been followed by the Investigating Officer, however, there is evidence in the police papers to state that attempts were made to arrest the applicant No.1. Statements of witnesses have been recorded which disclose that deceased used to harass his wife – accused No.6. There are confessional statements made by the co-accused and they have discovered certain articles. Definitely, in view of Section 27 of the Indian Evidence Act that part would be admissible in evidence which would lead to discovery of fact. The other part, which amounts to confession and barred under Section 25 of the Indian Evidence Act from leading evidence can however be utilized as an information by the police for further investigation. Therefore, in order to consider as to what was the motive, all those facts will have to be considered and the further investigation would be required to be made. The basic facts have been collected by way of evidence in the nature of statements of witnesses and the arrest of the co-accused and discovery is leading to the prosecution story that there was a conspiracy and/or common intention. The statements of the driver and accompanying two persons with him are definitely vital. They have stated that they had come along with the

applicant No.1 to Parbhani on 13.10.2021. The Advocate who was representing the dispute between deceased and his wife and also the sister of the deceased is stating about the dispute and attempt to settle the matter, however, at the time of dispute itself the deceased was assaulted from the side of the wife. So, this is the additional factor which has been posed by the prosecution as motive. Taking into consideration the fact that the applicants have absconded, the possibility of they getting absconding after grant of bail cannot be ruled out. In the decision of **Lavesh vs. State (NCT of Delhi), 2012 (8) SCC 730** Hon'ble Supreme Court has stated that anticipatory bail cannot be granted to a person who has declared absconded. No doubt, in this case, as on today, the applicants have not been declared as absconded by adopting procedure under Section 82 and 83 of the Code of Criminal Procedure, but still same analogy would have been adopted, because there were attempts to arrest all applicants and they were not available at the expected addresses. Extraordinary discretionary relief, therefore, cannot be granted in favour of such persons. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)