

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.418 OF 2022

ABHIJEET AMAR GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. V.D. Salunke, Advocate h/f Mr. M.V. Salunke, Advocate for the applicant
Mr. B.V. Virdhe, APP for the respondent

...

WITH
ANTICIPATORY BAIL APPLICATION NO.382 OF 2022

VIJAYDATTA LAXMAN PATIL
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. S.J. Salunke, Advocate for the applicant
Mr. B.V. Virdhe, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 12th APRIL, 2022
PRONOUNCED ON : 28th APRIL, 2022

ORDER :

1 Both the applicants are apprehending their arrest in connection

with Crime No.35/2022 dated 22.02.2022 registered with Tamalwadi Police Station, Tq. Tuljapur, Dist. Osmanabad, for the offence punishable under Section 166, 166-A, 167, 196, 202, 203, 209, 406, 418, 463, 464, 465, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860. The applicant in Anticipatory Bail Application No.418 of 2022 is a Police Constable attached to Police Chowki, Civil Hospital, Solapur and the applicant in Anticipatory Bail application No.382 of 2022 is the practicing Advocate at Osmanabad.

2 Heard learned Advocate Mr. V.D. Salunke holding for learned Advocate Mr. M.V. Salunke for the applicant in Anticipatory Bail Application No.418 of 2022, learned Advocate Mr. S.J. Salunke for the applicant in Anticipatory Bail Application No.382 of 2022 and learned APP Mr. B.V. Virdhe for the respondent.

3 It has been vehemently submitted on behalf of the applicant in Anticipatory Bail Application No.418 of 2022 after narrating the contents of First Information Report that the First Information Report is the outcome of the directions given by this Court in Public Interest Litigation No.3 of 2020. A committee was formed for investigation regarding filing of false motor accident claims through CID, State of Maharashtra, Pune. The informant Mr. Ajit Tukaram Chintle is serving as Deputy Superintendent of Police in Crime

Investigation Department, Osmanabad and after investigation he has filed the First Information Report. The role attributed to the present applicant is that he along with the Police Head Constable Mr. Chavan at the Police Chowki in Civil Hospital, Solapur had made corrections in MLC by applying whitener and mentioning the tractor number – MH 13-DE-4085 in the accident, when in fact that tractor was not at all involved in the accident. It is, therefore, stated that it is the false implication of the vehicle by the present applicant. In fact, the applicant is at the lower rank authority in Police Department. He was on duty along with Police Head Constable Mr. Chavan. The inquest panchnama was written and signed by PHC Mr. Chavan. The applicant who is the subordinate officer is being made scapegoat, the custodial interrogation is not necessary. The applicant is having permanent place of abode and he is ready to abide by the terms of the bail.

4 The learned Advocate appearing for the applicant in Anticipatory Bail Application No.382 of 2022 has vehemently submitted that the accident had occurred on 17.12.2019 and injured Mahadu Laxman Ghodke expired in the same. Inquest panchnama was carried out on 18.12.2019 showing involvement of a particular tractor. The First Information Report indicates that the present applicant had approached the relatives of the deceased on 19.12.2019 and sought information about the accident and it is alleged that

he has caused certain corrections and involvement of another vehicle just to by promising that by such act relatives of the deceased would get compensation. Filing a claim petition cannot be termed as an offence punishable under any of the provisions of the Indian Penal Code. The said claim petition is still pending on the file of learned Chairman, Motor Accident Claims Tribunal, Osmanabad. Compensation has not been awarded under any of the provisions of the Motor Vehicles Act. The First Information Report does not indicate any breach of process or forgery by the applicant. The applicant being the Advocate relied upon the documents provided to him by the relatives of the deceased to file the claim petition. The story given by them is unbelievable. The Investigating Officer as well as informant cannot use pick and choose method and array the applicant as accused. Since custodial interrogation is not required and the Investigating Officer had issued notice under Section 41(A) of the Code of Criminal Procedure to the applicant he could not attend the Police Station because of his ill health. He replied the notice by RPAD and showed his inability to attend the Police Station. Now, he is having reasonable apprehension of being arrested. Applicant is ready to abide by the terms of the bail.

5 Learned APP has strongly opposed the application and submitted that both the applicants had every knowledge that the real involvement of

the vehicle was different but it could not have fetched compensation to the relatives of the deceased and, therefore, the Advocate approached first. He promised to do certain acts and thereafter it appears that everything has been got done by him suitable to file a claim petition. Applicant in Anticipatory Bail Application No.418 of 2022 has then supported the design by the Advocate. Custodial interrogation is therefore necessary.

6 It is to be noted that the First Information Report has been lodged by Deputy Superintendent of Police, Crime Investigation Department, Osmanabad Mr. Ajit Tukaram Chintle. As per order passed by this Court in Public Interest Litigation No.3 of 2020 a committee was formed for investigation of false motor accident claims through CID, State of Maharashtra. According to informant, Motor Accident Claim Petition No.25/2020 connected to Tamalwadi Police Station in Crime No.4/2020 under Section 279, 338, 304-A of the Indian Penal Code in respect of death of one Mahadu Laxman Ghodke was given for investigation. After the inquiry was carried out, it was revealed that he himself had caused the said accident. He had not taken note of the condition of the road and by rashly and negligently driving his own Tractor, which then turtled, he got trapped below the Tractor and was taken to Solapur by Ambulance. In the First Information Report it is stated that the witness who was present at the spot had contacted

Police Patil as well as Police Head Constable Jairam Rathod i.e. co-accused, who was the Bit Amaldar and he had also forwarded the photographs of the accident on mobile on their WhatsApp, before the injured could be shifted to Solapur. After the injured was taken to Civil Hospital, Solapur he was declared dead. It is then stated that in the Police Chowki attached to Hospital Police Head Constable Mr. Mangesh Dhaku Chavan and his colleague Police Constable Mr. Abhijeet Amar Gaikwad took entry regarding the same in MLC register. PHC Mr. Chavan prepared Inquest Panchnama in the Police Station, which was carried out by Dr. Pooja Jadhav. The cause of death was stated as - "Shock and Hemorrhage due to injuries to vital Organs". It is then stated that the funeral was performed on 18.12.2019. On 19.12.2019 Advocate Mr. Vijay Laxman Patil went to the house of deceased and made inquiry about the accident with the relatives of the deceased. He also asked about the details of Tractor and licence of the deceased. The relatives told him that the Tractor was new which was in the name of deceased himself and due to his own reasons it turtled. He was also not holding licence. After getting this information, the Advocate told that it will not be befitting within the parameters of filing a Motor Accident Claim Petition but then for that purpose some other Tractor and driver holding licence will have to be shown. He assured that he would manage everything including police, but the relatives will have to pay 20-25% of the commission

of the accident compensation. Thereafter, nephew of the deceased gave his own Tractor number and then the whitener was applied on the Medico Legal Certificate prepared by PHC Mr. Chavan and PC Mr. Gaikwad and the Tractor number of the nephew of the deceased was shown to be involved. That change was also made in the Inquest Panchnama. Panchas were again called and then their signatures were taken. The story was rebuilt and the wife of the deceased lodged the report on 08.01.2020 by including two persons as eye witnesses. The investigation was accordingly done and charge sheet was filed. In the inquiry, after the order in Public Interest Litigation No.3 of 2020 was filed, all these things have been revealed and, therefore, offence has been lodged.

7 It will not be out of place to mention here that filing of such false cases are increasing. It is only with an intention to get more compensation. Note of such cases has also been taken by Hon'ble Supreme Court. This Court also taking into consideration the increase in such false cases had passed the said order in the Public Interest Litigation. Applicant in Anticipatory Bail application No.418 of 2022 is the Police Constable. He has no authority to investigate as per the scheme of Code of Criminal Procedure. He might be assisting PHC Mr. Chavan at the Police Chowki in Civil Hospital, Solapur, but independently he has no authority or power to execute inquest

panchnama. No doubt, as regards the said inquest panchnama is concerned, whitener is applied and corrections have been made. The said inquest panchnama bears the signature of PHC Mr. Chavan. So also, the report that was forwarded for Postmortem also bears his signature. Therefore, though applicant may be the subordinate of PHC Mr. Chavan, we cannot conclude that he would have taken some active part. His custodial interrogation is not necessary and, therefore, he deserves anticipatory bail.

8 Turning towards the applicant in Anticipatory Bail Application No.382 of 2022 is concerned, he is the practicing Advocate, who had filed the claim petition on behalf of the legal heirs of deceased Mahadeo @ Mahadu Laxman Ghodke. After the inquiry, which was on the basis of order passed by this Court in Public Interest Litigation No.3 of 2020, the informant has lodged the said report. Before lodging the report when the inquiry was contemplated he has recorded the statements of the relatives of the deceased and in their statements they have categorically stated that immediately next day of death of Mahadu Ghodke the applicant went to house and made inquiry about the manner in which the accident had taken place. It will not be out of place to mention here that it is the practice of many Advocates to contact the relatives of the deceased immediately or contact the injured immediately after the accident. They have also stated as to how the

applicant i.e. Advocate Mr. Patil gave assurance to the relatives for enhanced compensation, by stating that unless some other tractor is shown to be involved in the accident the compensation is not possible. It appears that the vehicle number was inserted when in fact on the day of accident the tractor which was driven by deceased Mahadu was not registered with RTO at all. So also, when the negligence was of Mahadu, on the say of Advocate Mr. Patil the brother-in-law of deceased agreed to become accused. That means, as per the inquiry that has been carried out and the prosecution story the Advocate is the mastermind of the design for the claim petition. The police papers show that the informant had recorded statements of 17 persons and they have stated as to what was disclosed by the concerned Advocate to him and how a design was prepared. In order to show that he had visited the village of the deceased even the record from Toll Plaza about his car has also been taken. It shows that on 19.12.2019 at about 12:27:32 the said vehicle went towards Solapur. So also, on other dates also he went towards Solapur.

9 Another fact to be noted is that Investigating Officer had issued notice under Section 41(A) of the Code of Criminal Procedure to the present applicant, however, he did not remain present. Now, he is stating that due to his illness he could not remain present. However, it appears that from the police record that his statement was recorded by the Inquiry Officer on

17.11.2021, but that is the part of the inquiry and not after the lodging of the First Information Report. Police papers also disclose and it appears that the record has been taken from Case Information System that he has filed about 314 Motor Accident Claim Petitions and Execution Petitions and all are pending with Motor Accident Claims Tribunal, Osmanabad.

10 An Advocate is the officer of the Court. No doubt, he pleads for his client, but he should be honest to the profession, towards Court as well as towards his client. Under such circumstance, for any such professional misconduct he is adopting forged documents or getting certain documents fabricated, then, he is rather defaming the entire fraternity of Advocates. The offence alleged to have been committed by him is definitely serious. Whether custodial interrogation is required or not is one of the questions, but still whether with this kind of facts the Court should exercise extraordinary discretionary relief in favour of such person is a question and the answer would be definitely 'in the negative'. Therefore, the applicant in Anticipatory Bail application No.382 of 2022 does not deserve to be released on anticipatory bail. Hence, following order.

ORDER

1 Anticipatory Bail Application No.418 of 2022 stands allowed.

2 In the event of arrest of the applicant viz. **Abhijeet Amar Gaikwad**, in connection with Crime No.35/2022 dated 22.02.2022 registered with Tamalwadi Police Station, Tq. Tuljapur, Dist. Osmanabad, for the offence punishable under Section 166, 166-A, 167, 196, 202, 203, 209, 406, 418, 463, 464, 465, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860, he be released on P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.

4 He should cooperate with the investigation and shall remain present before the Investigating Officer, on every Sunday, between 10.00 a.m. to 12.00 noon, till June, 2022 end or filing of charge sheet, whichever is earlier.

5 Anticipatory Bail Application No.382 of 2022 stands rejected.

(Smt. Vibha Kankanwadi, J.)