

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.428 OF 2022

- 1- Rajaram s/o Kerba Aade,
- 2- Anil s/o Kerba Aade,
- 3- Shivaji s/o Kerba Aade,
- 4- Bablu s/o Rajaram Aade,
- 5- Namdeo s/o Ratan Aade,
- 6- Sachin s/o Shivaji Aade

...Applicants

VERSUS

The State of Maharashtra

...Respondent

.....
Advocate for Applicants : Mr. J. M. Murkute
APP for Respondent-State : Ms. Vaishali Patil Jadhav
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 20-04-2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.142 of 2020, registered with Police Station Jalkot, Taluka Jalkot, District Latur, for the offence punishable under Sections 353, 297, 143, 147, 149, 188, 504, 506, 336 of Indian Penal Code.

2. Heard learned Advocate Mr. J. M. Murkute for applicants and learned APP Ms. Vaishali Patil Jadhav for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that it has been lodged by Police Head Constable Prakash Ramrao Chimandare attached to Jalkot Police Station. He states that the police station had received a phone call that a lady has expired at Balaji Tanda Ravankola, and therefore, the police party went there. One Sunil Aade who claimed that he is the brother of the deceased lady, told the name of the deceased as Rekha Balaji Chavan. He also gave as to who are the other persons who were gathered, however, the mother-in-law told that the father of the deceased and his relatives formed unlawful assembly and by taking sticks and stones in their hands, started assaulting mother-in-law of the deceased, and when police party tried to separate them, they were also tried to be assaulted. Those persons had raised obstruction for the work of doing inquest panchanama and post-mortem. The present applicants are those persons alleged to have formed unlawful assembly and assaulted the mother-in-law of the deceased as well as allegedly used the criminal

force against the police officers.

4. Police papers would show that after the inquiry into the A. D., later on PSI Vishwanath Boinwad has lodged FIR against Balaji Chavan i.e. the husband of the deceased Rekha for the offence punishable under Section 302 of the IPC. The post-mortem report gave the probable cause of death as a strangulation. Under such circumstances, it is to be noted that applicant No.1 being the father of the deceased and the other applicants being the relatives would have got angry. No doubt, they ought to have controlled their anger when police had arrived and in fact in that anger they pelted stones and damaged the household articles worth Rs.1 lakh.

5. The interesting point to be noted is that as regards the present applicants are concerned, it has been specifically stated in the charge-sheet that has already been filed before Judicial Magistrate First Class on 21-01-2021 that after giving notice under Section 41 (1) of Cr.P.C., they were allowed to go. The Investigating Officer has not considered them as absconding or in any way tried to avoid arrest. The investigation could be completed without arresting them. Under such circumstances, their custodial interrogation is not necessary, and therefore, the applicant deserve to be released on

anticipatory bail.

6. The learned Additional Sessions Judge-1, Udgir, has rejected the bail application filed by the present applicants on 11-03-2022 and has also noticed that the notice under Section 41(1) of Cr.P.C. was given to the applicants. It was also noticed that the Investigating Officer was allowed to go them free. Under such circumstances, the learned Additional Sessions Judge ought to have allowed the application by holding that the custodial interrogation is not at all necessary and the charge-sheet is already filed. In *Ms. Y Vs. State of Rajasthan and Anr., reported in Criminal Appeal No.649 of 2022 (Arising out of SLP (CRL.)No.7893 of 2021) 2022 LiveLaw (SC) 384*, wherein the Hon'ble Supreme Court has observed that : -

"A recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances have been considered." Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice."

It is also observed further that : -

"Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the

vice of arbitrariness.”

When in catena of Judgments, especially *Arnesh Kumar vs. State of Bihar*, reported in 2014 (8) SCC 273, and in *Joginder Kumar vs. State of U.P.*, (1994) 4 SCC 260, the Hon’ble Supreme Court has observed that the arrest of the accused is not the only solution and then when the parameters were followed by the Investigating Officer and if he himself had not felt that the custody of the accused is necessary, then in order to avoid misuse of anything, the bail application ought to have been allowed by the learned Additional Sessions Judge. Once again it is clarified that this Court is not sitting in appeal while deciding present application, but because of such refusals the work of this Court is burdened, this should be avoided by the Sessions Judges as well as Additional Sessions Judges.

7. In view of above, the application, therefore, stands allowed.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicant No.1- Rajaram s/o Baker Aade, applicant No.2- Anil s/o Kerba Aade, applicant No.3- Shivaji s/o Kerba Aade, applicant

No.4- Bablu s/o Rajaram Aade, applicant No.5- Namdeo s/o Ratan Aade, and applicant No.6-Sachin s/o Shivaji Aade, in connection with Crime No.142 of 2020, registered with Polcie Station Jalkot, Taluka Jalkot, District Latur, (R.C.C.No.7 of 2021) for the offence punishable under Section 353, 297, 143, 147, 149, 188, 504, 506, 336 of I.P.C., they be released on P.R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

3) They shall not tamper with the evidence of prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.