

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.801 OF 2022

SANTOSH @ BAPU SUDAM AWARE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Shashikant E. Shekade and Ms. Sarita S. Sabale, Advocates for
the Applicant

Mr. G.O. Wattamwar, APP for Respondent/State

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[CORAM : S.G. MEHARE, J.]

DATE : 6th JULY, 2022

Per Court :

1. The applicant approached this Court for anticipatory bail under Section 438 of the Code of Criminal Procedure in Crime No.128 of 2017 registered at M.I.D.C. Police Station, Ahmednagar, for the offences punishable under Sections 302, 201 of the Indian Penal Code.

2. Learned counsel for the applicant vehemently argued that the incident happened in the year 2017. The applicant has no role to play. There is absolutely no evidence, direct or indirect, against the applicant. Only on the suspicion, he has been arraigned as an accused in the crime.

3. The F.I.R. has been lodged on an anonymous letter, wherein it has been alleged that the present applicant and one Bapu Sudam Aaware murdered Raosaheb Sadashiv Mokate.

4. Learned counsel for the applicant would submit that the applicant was called by the Investigating Officer on 17.08.2017 for the interrogation regarding the alleged incident. To that effect, a letter dated 17.08.2017 has been placed on record. Thereafter, the police recorded the statement of the applicant on 23.08.2017. At that time also, the police did not arrest the applicant. Since there was no evidence against the applicant and the incident happened in the year 2017, the prosecution has no case for custodial interrogation.

5. Learned APP strongly opposed the application, contending that one witness Asif Saifuddin Shaikh had stated in his statement dated 18.05.2017 that he saw three persons on 13.05.2017. He had informed the said incident the Police Patil and stated that those persons fled away from the spot. He may identify them if shown to him. His supplementary statement dated 10.04.2018 has also been referred to by the learned APP for the State to point out that in the test identification parade, co-accused Balasaheb Maruti Mokate has been identified. On showing the photograph, he

identified the accused. Therefore, the custody of the applicant is required for the test identification parade.

6. To buttress his argument, he relies on the case of ***Neelesh Meshkar Vs. The State of Madhya Pradesh*** in M.Cr.C. No. 9467 of 2014, decided on 15.07.2014.

7. This case is a mockery of the investigation. One can ascertain the seriousness of Investigating Officer and his casual approach in the investigation of a crime like murder. The first information was received at the Police Station under the anonymous letter on 18.05.2017. In the said case, the name of the applicant was written. That day itself, the Investigating Officer got the knowledge of the accused. Thereafter, in August 2017, the Investigating Officer called this accused for investigation and allowed him to go after recording his statement. Thereafter, the prosecution has come up with a case that some photographs are published and shown to the witnesses, and they are saying that they knew the persons who committed the murder of the deceased. One Asif Saifuddin Shaikh stated that he had seen those persons. Nothing comes in his statement except for the word 'that he saw those persons'. The names of the accused were already published and made public. Their photographs are also shown to the

witnesses. Now the Investigating Officer strongly opposed the application for anticipatory bail, contending that the police custody of the applicant is required for the test identification parade. The first statement of this witness Asif Shaik was recorded on 18.05.2017, and his second statement was recorded on 10.04.2018. The statement reveals that he learnt about the name of the applicant as an accused. The test identification parade of the co-accused is already held, and he identified him. The Investigating Officer had a lethargic approach. The primary rule of the test identification is the identity of such a person should not be made public, and every care has to be taken by the Investigating Officer that till the test identity parade, the face of the accused must be masked. However, in this case, the prosecution itself has a case that the photographs of the suspected accused have been published. When the prosecution has an anonymous complaint with a name, the question arises why the Investigating Officer allowed the applicant to go after recording his statement. This plea indicates nothing but a show that the investigation is going on. The test identification parade may be held even after the accused is on bail. It is not a rule that the accused must be in police custody for the test identification parade.

8. The overall investigation, as observed above, appears to be a show. Though the Investigating Officer knew the name of the applicant as an accused, he never arrested him, and after five years, when this applicant approached this Court for anticipatory bail, the prosecution strongly opposed the application and demanded the custody of the applicant for the test identification parade. Proviso to section 437 of Cr. P.C. provides that mere fact that an accused person may be required for being identified by witnesses during the investigation shall not be sufficient ground for refusing the bail.

9. Considering the overall factum of the case and the way of the investigation, this Court is of the view that the prosecution has good ground to seek the arrest of the applicant for the test identification parade. Therefore, the application deserves to be allowed. Hence, the following order.

ORDER

(i) The application is allowed.

(ii) In the event of arrest of the applicant **Santosh @ Bapu Sudam Aware** be released on bail on furnishing PB. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) with one or two

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solvent sureties of the like amount in Crime No.128 of 2017 registered at M.I.D.C. Police Station, Ahmednagar for the offences punishable under Sections 302, 201 of the Indian Penal Code, on the condition that he shall attend the Police Station as and when called by the Investigating Officer on written notice.

[S.G. MEHARE, J.]

S.P. Rane