

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

ANTICIPATORY BAIL APPLICATION NO.1154 OF 2022

Swapnil @ Pappu Govind Birajdar

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr. Ajeet B. Kale, Advocate for the Applicant

Mr. A. V. Deshmukh, APP for the Respondent

...
CORAM : NITIN B. SURYAWANSHI, J.

...
DATE : 17th October, 2022

PER COURT :-

1. Heard.
2. Applicant is apprehending arrest in connection with Crime No.185 of 2021, registered with Kasar-Shirshi Police Station, Latur, for the offences punishable under Sections 302, 324, 504 and 506 read with 34 of the Indian Penal Code.
3. First Information Report is lodged on 07-07-2022, wherein, it is alleged by the cousin of applicant that there is a dispute about the boundary of their respective agricultural field. On 06-07-2021, father of informant, namely, Subhash Dhondiba Birajdar was assaulted by uncle Waman Dhondiba Birajdar and cousin Sachin Waman Birajdar. Therefore, information was given to Kasar-Shirshi Police Station. On 07-07-2021, at about 6:30 a.m., informant and

his father Subhash Dhondiba Birajdar went to agricultural field for extracting milk from their farm animals. At that time, when informant was returning from agricultural field, he saw cousin Sachin Waman Birajdar, Sadashiv Waman Birajdar, uncle Waman Dhondiba Birajdar and present applicant going towards their agricultural field. When he called his father at 08:00 am, his father informed him that, all accused persons (named in FIR) are assaulting him. The informant immediately rushed to the spot and saw, applicant and others are assaulting his father – Subhash and Sachin assaulted with iron rod, Sadashiv assaulted with stick as well as applicant and his uncle Waman assaulted with stones on hand and chest of his father. When his father was taken to the Hospital, he was declared dead.

4. In the said offence, accused i.e. Sachin Waman Birajdar, Sadashiv Waman Birajdar and Waman Dhondiba Birajdar were arrested and it is informed that, Waman Dhondiba Birajdar is granted regular bail, whereas, application filed by accused no.1/Sachin and accused no.2/Sadashiv are rejected by this Court. Charge-sheet is filed on 04-10-2021 and case is numbered as R.C.C. No.641/2021.

5. Learned Additional Public Prosecutor strenuously opposed the application contending that, applicant is absconding since the date of incident and has belatedly approached before the Court by filing

anticipatory bail application. He also submits that, applicant is implicated in Crime No.94/2018, registered with Kasar-Shirshi Police Station, District Latur, for the offences punishable under Sections 143, 147, 353, 332, 323, 504 and 506 of IPC and non bailable warrant is issued against the applicant in that offence by the Sessions Court. By pointing out the inquest panchanama, he submits that, injuries on the hand and chest of deceased are reflected in the inquest panchnama. He submits that, applicant has committed a serious offence of murder and therefore, applicant is not entitled for discretionary relief.

6. On going through the investigation papers, it appears that all eye witnesses have attributed overt act on assault by stone to the applicant and have stated that, applicant had assaulted on hands and chest of deceased. The said allegations are prima facie unacceptable in view of postmortem report, in which, only two injuries are mentioned; (1) CLW over right frontal area scalp underlying depressed fracture of skull and (2) CLW over left frontal area involving eyebrow obliquely placed from root of nose to lateral end of eye brow. No injuries were noticed on the hands and chest of deceased during postmortem.

7. Admittedly, there is a dispute between family of applicant and informant on the boundary of their agricultural land. Therefore,

false involvement of applicant in the alleged offence cannot be ruled out at this stage.

8. Though the learned Additional Public Prosecutor alleges criminal antecedents of applicant, it can be seen that, employee of MSEDCL was allegedly assaulted in offence of Crime No.94/2018 by villagers and present applicant is named as one of the accused in the said offence. This Court in Anticipatory Bail Application No.971/2018 has granted anticipatory bail to applicant in that offence. It appears that, since applicant failed to attend as he was implicated in the present crime, nonailable warrant is issued against him. That by itself is not a sufficient ground to refuse anticipatory bail to the applicant in the present case.

9. Taking into consideration the fact that main accused persons are already arrested and they are in jail, as investigation is complete and charge-sheet is filed, and since postmortem report does not support the allegations against the applicant, applicant deserves relief.

10. The application is therefore allowed by confirming the interim order dated 10-10-2022 passed by this Court.

[NITIN B. SURYAWANSHI, J.]

Sameer