

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

ANTICIPATORY BAIL APPLICATION NO.1574 OF 2021

Bhagyashree D/o Govind Mokate

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Santosh S. Jadhavar Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 7th JANUARY 2022

DATE OF PRONOUNCING ORDER : 1st FEBRUARY 2022

ORDER :

1. Present applicant is apprehending her arrest in connection with Crime No.36 of 2017 registered at MIDC Police Station, Ahmednagar for the offence punishable under Sections 304, 328 read with Section 34 of the Indian Penal Code and under Section 65 (c) (f) (f) and 68 (b) of the Maharashtra Prohibition Act, 1949 and

under Section 3 (1) (i), 3 (1) (ii), 3 (2), 3 (4) and 4 of the Maharashtra Control of Organized Crime Act, 1999.

2. It will not be out of place to mention here that earlier application filed by the applicant bearing Criminal Application No.1793 of 2017 for anticipatory bail itself was disposed of by this Court as withdrawn by order dated 28th April, 2017.

3. Heard learned Advocate for the applicant and learned APP for the respondent – State.

4. It has been vehemently submitted on behalf of the applicant that she has been falsely implicated. The applicant is a student of Bachelor of Physiotherapy and studying in the College of Physiotherapy, Ahmednagar. She was not interested in politics, however, her father was already in politics and as the seat of Zilla Parishad was reserved for women; her father had asked her to contest the election and therefore, she had filed the nomination papers. Though she had contested election of Zilla Parishad, all the affairs of campaigning were looked after by the family members and other party workers. The First Information Report discloses that a dinner party was arranged by one

Mangal Mahadev Avhad and present applicant on 12th February 2017, in which apart from vegetarian and non-vegetarian food, liquor was also served. The informant Baban Rangnath Avhad states that his brothers and other persons were campaigning along with Mahadev Kisan Avhad daily and since the dinner party was arranged, they had gone to attend the said dinner party, but they did not return. On 13th February 2017 at 8.30 p.m. Jalinder Palve, brother-in-law of his brother Popat given him phone call stating that since brother Popat and brother Dilip were ill as they were suffering from vomiting, they were taken to the Civil Hospital, Ahmednagar. Thereafter, informant went to the Civil Hospital where he came to know that his brother Popat expired around 8.45 p.m. and another brother Dilip expired at 11.30 p.m. He also came to know that one Rajendra Andhale, another person from his village who had also attended the dinner party and consumed liquor and was also admitted in the hospital for vomiting, also expired and then the informant lodged the report.

5. It has been further submitted on behalf of the applicant that applicant was not involved in the arrangement of dinner nor present when the liquor was served. In fact, at the time of incident, she was campaigning in village Adgaon, which is at a

distance of about 20 to 25 Kms. and would have taken about 45 minutes to reach the place of incident. The campaigning meeting attended by her has been video recorded by the team of Election Commission which shows her presence along with her father at the meeting in Adgaon. The arrangement of said dinner was made by Smt. Mangal Avhad and it was in the house of that candidate. The applicant is not involved in the unfortunate incident of death of people due to alleged consumption of spurious liquor. The applicant has filed nomination form to contest the election at the insistence of her father, against her wish. In fact there was no material before the authorities to invoke the provisions of the Maharashtra Control of Organized Crime Act (for short "MCOC Act"), however the said provisions were also invoked. The applicant had in fact filed Criminal Writ Petition No.4478 of 2017 for quashing of the proceedings in Special Case No.3 of 2017 arising out the same crime Number, and the Division Bench of this Court at the Principal Seat, on 7th March 2018 had refused to exercise the writ jurisdiction and the said Writ Petition came to be dismissed in view of the fact that provisions of MCOC Act were invoked. There was nothing as a crime syndicate.

6. It has been further submitted on behalf of the applicant that now the investigation is complete and charge-sheet is also filed. Perusal of the charge-sheet would definitely show that there is no crime syndicate between the accused persons and the physical custody of the applicant is not at all necessary. Nothing is required to be seized from her custody. The person who had manufactured the liquor has been arrested. So also Mangal Mahadev Avhad, Mahadev Kisan Avhad and other accused persons were arrested and they are in jail. The applicant wants to pursue her studies and will not involve in any political activity. Though the charge-sheet has been filed contending that present applicant is absconding, yet there are documents in the nature that applicant had appeared for the examinations. Notices regarding various meetings in Zilla Parishad were served on her. She has also done social work and utilized her capacity as elected member of Zilla Parishad for construction of roads and that can be demonstrated on the basis of letters written by her. She deserves to be released on anticipatory bail.

7. Per contra, the learned APP strongly opposed the application and submitted that the applicant had contested the election for the Zilla Parishad. She along with Mangal Mahadev

Avhad were the candidates from the same political party. Many persons were campaigning for them and they had then arranged dinner party for those persons. In the incident 9 persons have expired by consuming spurious liquor and 13 persons have been affected i.e. the victims. Two of them have become blind and one has suffered paralytic attack. The bottles which were seized from the spot were sent for chemical analysis and the report states that the liquor contains methyl alcohol (methanol) and even in the bodies of 9 dead persons as well as the victims there were traces of methyl alcohol (methanol). The medical officer has opined that the consumption of methanol affects the human system. The present applicant has gone absconding since the date of offence. The other evidence has been collected, however, as regards the involvement of the applicant is concerned, investigation has to be made independently also. Applicant was searched by the Superintendent of Police, Deputy Superintendent of Police, Ahmednagar at different times. When she could not be arrested or traced out, proclamation under Section 82(2) of the Code of Criminal Procedure was issued under the orders of competent Court. The said proclamation has been properly served and executed, however, she did not appear. Even at the time of earlier application this Court was not inclined

to grant any relief to the applicant and she has withdrawn the application on 28th April 2017. Since that date also till today applicant is absconding, therefore, she does not deserve to be released on pre-arrest bail. Cognizance has been taken by the Special Court of the offence under MCOC Act. In view of the fact that it was found that it was a crime syndicate, those Sections have been added. When the dinner party was organized for the benefit of the applicant and she came to be elected, that means she has received benefits of the campaign made by those persons who had made campaigning for her and now she contends that she had not organized that dinner party. She does not deserve any sympathy.

8. Learned APP has produced on record the copy of the Panchnama of execution of the proclamation under Section 82(2) of the Code of Criminal Procedure. Even the order has been passed by the Special Court that the applicant should remain present before the Court after the charge-sheet was filed, but she has not responded. The learned APP relied on the decision in ***Lavesh vs. State (NCT of Delhi), 2012 (8) SCC 730***, wherein it has been observed that :-

“Normally, Court should not exercise its discretion for grant of anticipatory bail in disregard to magnitude and seriousness of matter. When accused is absconding and declared Proclaimed Offender there is no question of granting anticipatory bail.”

9. Herein this case, the charge-sheet has been filed on the basis of the investigation that has been done. The Sections those have been invoked are for the offence under Sections 304, 328 read with Section 34 of the Indian Penal Code and under Section 65 (c) (f) (f) and 68 (b) of the Maharashtra Prohibition Act, 1949. The charge-sheet was filed before the learned J.M.F.C., Court No.2, Ahmednagar. The learned Magistrate by order dated 24th May 2017 committed the case to the Court of Sessions. Thereafter, it appears that the Investigating Officer registered the offences under Section 3 (1) (i), 3 (1) (ii), 3 (2), 3 (4) and 4 of the MCOC Act and thereafter the learned Additional Sessions Judge, Ahmednagar committed the case to the Special Court (MCOCA Court), Nashik.

10. It then appears that one of the co-accused Surjitsing Bhagatsingh Gambhir filed Writ Petition No.913 of 2019 before this Court at the Principal Seat, for quashing. The Division Bench, by order dated 13th September 2019 held that, there is

no justification for invocation of provisions of MCOC Act and to that extent it was quashed against that petitioner.

11. The charge-sheet has been filed on 11th May 2017. It appears that after taking all the earlier steps, proclamation requiring appearance of the accused person was issued as per Section 82(2) of the Code of Criminal Procedure by the learned Special Judge, Nashik on 22nd April, 2019. It has been specifically mentioned in that proclamation that the warrant issued against the present applicant has been returned with remark that the accused could not be found. The learned Judge has expressed satisfaction that the present applicant is absconding or is concealing herself to avoid service of warrant. Learned APP has produced copy of the Panchnama regarding the execution of the said proclamation. It has been stated that it has been affixed at different conspicuous places including the house of the applicant. Copies of the newspaper cutting dated 4th May 2019 of Daily Newspaper Lokmat, Nashik Edition as well as Ahmednagar Edition have also been made available, which say that the proclamation has been issued against the applicant by the concerned Court. Therefore, it is certain that the evidence is on record that the proclamation has been served and the steps

required under Section 82(2) of the Code of Criminal Procedure have been taken as against the present applicant.

12. Though, now the applicant is coming with the case that she remains present for the various meetings of Zilla Parishad and receives communication, it is to be noted that she has not produced the certificate or such document from Zilla Parishad or Panchayat Samitee, Ahmednagar to state that she has really attended the said meetings and what she has produced is the communication received to her and notice of general body meeting. Whether in response to the said notice she had attended the meeting cannot be gathered and therefore, specific question was asked to the learned Advocate appearing for the applicant as to why the applicant had not responded to the proclamation that was issued and served under Section 82(2) of the Code of Criminal Procedure, he could not give the specific answer for the same. Therefore, the ratio laid down in **Lavesh** (supra) would definitely deserves to be invoked. The present applicant has been declared as a Proclaimed Offender and therefore, there is no question to grant anticipatory bail in her favour.

13. As regards the merits of the case are concerned, seriousness of the offence is also required to be considered when 9 persons have expired and 13 persons have been affected, out of which two have become blind and one has suffered paralytic attack, then the magnitude of the offence is definitely required to be considered. There is evidence in the entire charge-sheet that the said dinner party was organized by the present applicant as well as Mangal Avhad. Apart from vegetarian and non-vegetarian food, a country liquor was also served. Empty bottles as well as certain bottles having liquor were seized and those were sent for chemical analysis. The report states that it is containing methanol. There are histopathology reports supporting the consumption of spurious liquor by the persons who expired. Those 13 persons who have survived, their statements are important and in one voice they are saying that the said party was organized by the two candidates.

14. Now, the question comes regarding the knowledge and motive. The evidence on record collected on its face may not state about the intention or motive, but then if the applicant would have remained present at the spot of dinner and before serving the country liquor to those persons would have taken

precautions to see that no spurious substance is allowed to be served, then the incident could have been avoided. By taking plea of alibi (which cannot be considered at this stage of anticipatory bail) yet, one cannot say that she can avoid her responsibility. It can also be said that because of the campaigning done by those persons who expired and also who are the victims, the applicant got elected and she is enjoying the fruits. She cannot take the credit of construction of roads, if any, on the basis of her letters. Now, that social work which is alleged to have been done by the present applicant cannot be considered as a certificate in this case. On earlier occasion when disinclination was shown by this Court, applicant has withdrawn her anticipatory bail application on 28th April, 2017 itself and in spite of the proclamation she has not appeared in the matter / not surrendered before the authorities, therefore, she does not deserve any sympathy.

15. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]