

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 719 OF 2022

Suresh Rambhau Deshmukh

..Applicant

V/s.

The State of Maharashtra

..Respondent

Ms. Rekha Musale i/b Mr. R.B. Thombare for the Applicant.

Mr. A.R. Kapadnis , APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 29 MARCH 2022

P.C.

1. The Applicant, apprehending arrest, in connection with investigation of Crime No.12/2021 of Police Station Vadgaon Maval Police Station, under Sections 307, 143, 147, 148, 149, 427, 504 and 506 of IPC and under Section 135 of Maharashtra Police Act, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 20 January 2021 lodged by one Bharti Vilas Dongre.

3. According to the informant on 19 January 2021 at about 5.30 p.m. she along with her son Shubham (since Deceased) and Prashant had gone to Vadgaon. At about 7.30 p.m. they were returning to the society by car bearing No. MH-12-JZ-7711. The deceased Shubham was driving the car. While the car was taking turn, there was yet another car coming from the opposite direction bearing car No. MH-14-HK-0322. The driver of the said car alighted and accosted Shubham as to the manner in which Shubham was driving the car and abused him and other occupants. Thereafter, it is alleged that the said driver assaulted Shubham alongwith 3 to 4 other persons.

4. The informant alongwith her son Shubham were proceeding to lodge a complaint about the incident. When they had reached near the Railway gate at Jambhul, about 6-7 persons came in two cars namely a Swift and Eco car. Out of these persons, 2-3 persons were having sickle (koyta), while others were having wooden sticks and stones. These persons started assaulting Shubham on his head and other parts of the body and also damaged the car of the informant. In the incident, the driving licence of one of the assailants fell on the spot, from which his name was disclosed as Sumit Shekhar Shinde. Thus, the informant reported that the said Sumit Shinde alongwith others had assaulted Shubham resulting into serious injuries to him. Shubham was carried to the Hospital and initially an offence for

rioting and Section 307 of IPC came to be registered. Shubham died during the course of the treatment on 26 February 2021, after which the offence under Section 302 of IPC was added.

5. In this case, after investigation a chargesheet is filed against the arrested accused.

6. Learned Sessions Judge has refused to grant anticipatory bail to the Applicant.

7. I have heard learned counsel for the parties. Perused record.

8. The principal submission on behalf of the applicant is that there is no proper identification and secondly the reliance on behalf of the prosecution on the statement of the co-accused Baban Dagadu Shinde, Rushikesh Suresh Shinde and Satish Shankarrao Shinde is not acceptable.

9. Learned APP submitted that, this is not an application for regular bail and for proper investigation of the matter including holding of identification parade if any, the custodial interrogation of the applicant is necessary.

10. I have carefully considered the circumstances and the submissions made.

11. Prima-facie it can be seen that offence is serious in which Shubham, the son of the informant was assaulted in which he sustained injuries to which, he succumbed. Insofar as the reliance placed on the statement of the co-accused is concerned, it is necessary to note that a distinction has to be made between the admissibility of a piece of evidence and any such statement being used by way of investigation aid/tool inasmuch as this is an application for pre-arrest bail.

12. The investigation carried out so far prima facie disclosed the involvement of the applicant and for further and proper investigation of the matter which is paramount consideration, the custodial interrogation of the applicant is warranted.

13. In such circumstances no case for grant of pre-arrest bail is made out.

14. The criminal application is accordingly rejected.

15. It is made clear that observations herein are for the limited purpose of deciding the application for anticipatory bail and the learned Sessions Court shall not be influenced by the same at any subsequent stage of consideration of application for regular bail, if any.

(C.V. BHADANG, J.)