

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1592 OF 2022

Anand Madhukar Kothavale

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Anand Patil, for the Applicant

Mr. Aditya Raktade, for the Intervener.

Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 20, 2022

P.C.:

1. This application is preferred for pre-arrest bail in connection with a crime registered against the applicant for the offences punishable under sections 120(B), 302, 306 and 506 read with 34 of the Indian Penal Code, 1860 pursuant to an order passed by the learned JMFC, Gadhinglaj in Criminal Misc. Application No. 65 of 2022 under section 156(3) of the Code of Criminal Procedure, 1973.

2. Vaishali (the deceased) was the daughter of Jaysingrao Deshmukh, the complainant. The deceased was the wife of the applicant. Avdhoot (the deceased son) was born out of wedlock. On 23rd January, 2021, the applicant lodged a report with Gadhinglaj police station that on 19th January, 2021 that the deceased wife and son had a quarrel with him. They insisted to reside separately from

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the applicant and demanded partition of the agricultural land and NIT company. The applicant was turned out of his home. He claimed to have lodged a non cognizable case against his deceased wife and son on 20th January, 2021. Since then he did not return home.

3. On 22nd January, 2021 at about 8 pm Malti Khot, a house maid, called and informed him that his wife was not opening door despite repeated knocks and calls on the cell phone. The applicant claimed to have reached home at about 9.15 pm. As there was no response from the deceased wife and son, he rushed to Gadhinglaj police station and returned to home accompanied by the police. When the door of the house was broken open, it was found that the deceased Vaishali had hanged herself in the room on the first floor and son Avdhoot had hanged himself in the hall. ADR was registered vide No. 6 of 2020.

4. The complainant initially lodged a complaint suspecting foul play on 8th October, 2021. Later on, the complainant filed a private complaint being Criminal Misc. Application No. 65 of 2022. The complainant pointed the circumstances which created a serious doubt about veracity of the version of the applicant. The complainant alleged that the deceased did not die by suicide but met homicidal death. The complainant further alleged that as the deceased were demanding a share in the property of the applicant,

the later had done them to death and a farce of the deceased having died by suicide was made.

5. By an order dated 20th May, 2022 the learned JMFC, Gadhinglaj was persuaded to direct investigation under section 156(3) of the Code, crime was registered pursuant to the said order. Investigation commenced. Apprehending arrest, the applicant and his brother and father preferred an application for pre-arrest bail. The learned Additional Session Judge was persuaded to exercise the discretion in favour of the brother and father of the applicant. The prayer of the applicant for pre-arrest bail, however, came to be rejected. Hence, this application.

6. The learned counsel for the applicant submitted that the complaint lodged by the complainant suffers from the vice of inordinate and unexplained delay. The incident occurred in between 21st January, 2021 to 22nd January, 2021. The complaint was lodged by the complainant on 21st February, 2022. In the intervening period, the complainant had lodged a report in writing on 8th October, 2021. It was duly investigated. Since the complicity of the applicant was not revealed, no further action was taken by the investigating agency. Thus, the Anticipatory Bail Application No. 122 of 2021, which was then filed by the applicant apprehending arrest, at that point of time, came to be disposed of by the learned

Additional Session Judge without any order.

7. The learned counsel for the applicant, further submitted that in the ADR report, lodged by the applicant on 23rd January, 2021, the applicant had narrated the sequence of the events. The complaint lodged by the complainant, is an exercise in desperation as the complainant at an advanced age of 94 years, could not bear with the loss of daughter and a teen-aged grandson. Therefore, in the totality of the circumstances, according to the learned counsel for the applicant, the applicant deserves the relief of pre-arrest bail.

8. The attendant circumstances cannot be lost sight of. In the very ADR report lodged by the applicant, there is a reference to the prelude to the alleged occurrence. The applicant claimed that the deceased had a quarrel with him and he was turned out of his own home. It further appears that apart from the deceased, only the applicant was the inhabitant of the house where the incident occurred. At this stage, it may not be advisable to delve into the alleged infirmities in the version of the applicant, sought to be highlighted by the complainant. However, the fact remains that the applicant is the only person who could shed light on the circumstances leading to the death of two grown up persons in his own house. Prima facie, the claim that the applicant came to know

that the deceased were not responding to the calls from the house maid as late as 8 pm on 22nd January, 2021, warrants investigation.

9. It is true that there was delay in lodging the complaint before the Magistrate. This aspect of delay, however, cannot be exalted to such a pedestal as to foreclose effective investigation into serious allegations. In the least, the material on record indicates that there was animosity between the deceased and the applicant. As the grave incident had occurred within the four walls of the house of the applicant, with prelude of quarrel, the custodial interrogation of the applicant, prima facie, seems indispensable for effective investigation.

10. I am, therefore, not inclined to entertain the application for pre-arrest bail.

11. Hence, the application stands rejected.

(N. J. JAMADAR, J.)