

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 774 OF 2023

Nilesh Dnyaneshwar Desale

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. S. H. Jadhav, Advocate for the applicant.

Ms. R. P. Gour, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 26th JUNE, 2023.

ORDER :

1. Applicant apprehends arrest in connection with Crime No. 022/2023, registered with Kasoda Police Station Tq. Bhadgaon Dist. Jalgaon, for the offences punishable under Sections 302, 120B, 34 of the Indian Penal Code and Section 4/25 of Arms Act.

2. First Information Report indicates that deceased Sachin, who is the cousin brother of the informant, was in the business of sand and there was dispute of deceased with applicant over the said business. It is alleged in the First Information Report that applicant had threatened deceased to see him which fact was disclosed by the deceased to the informant. On 18th March, 2023, informant came to

know that 2 to 3 unknown persons were searching for Sachin. On 19th March, 2023, he came to know that Sachin is found in injured condition in Girna river. He went to the spot and found that injuries were caused to the head and ribs of Sachin. He was taken to the hospital in an ambulance. It is alleged that the applicant along with unknown persons committed murder of the deceased.

3. Learned counsel for the applicant states that the factum of previous dispute between the parties would become a ground for false implication of applicant in this crime. It is stated that prima facie, there is no evidence to show involvement of applicant in this crime and on the basis of presumption, his liberty cannot be denied. He submits that charge-sheet is filed and hence custodial interrogation of the applicant is not necessary.

4. Learned APP opposed the application by contending that there are eye witnesses who had seen unknown persons proceeding in the vehicle of the applicant. It is also stated that the vehicle of the applicant was found near to the scene of crime. Apart from this, according to the prosecution, there is evidence on record to indicate

that there were money transactions between applicant and the assailants.

5. There is allegation of conspiracy being hatched by the applicant to eliminate deceased. There is more than sufficient evidence placed on record which indicates that the co-accused were assailants and in the said assault deceased died. First Information Report clearly shows that there were disputes between the applicant and deceased over money transaction and that applicant had threatened the deceased. There cannot be any direct evidence of criminal conspiracy as same being hatched in secret. However, there is circumstantial evidence on record to indicate involvement of the applicant in the crime to infer criminal conspiracy. The vehicle belonging to the applicant was found near the spot and that the assailants were seen using the said vehicle. Moreover, there is evidence in the form of bank transaction and money transfer done by the applicant in favour of the co-accused who are the actual assailants. In view of this, this evidence is prima facie sufficient to consider the involvement of the applicant in this crime.

6. The offence in question is serious in nature. Investigating agency needs to get an opportunity to find out the manner in which the applicant is involved in the crime and how the incident of assault was planned and executed. Hence, application stands rejected.

7. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb