

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

919 ANTICIPATORY BAIL APPLICATION NO.1086 OF 2023

SHAIKH SULTAN S/O SHAIKH DAWOOD
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Shikrashna B. Solanke
APP for Respondent – State : Mr. S.N. Morampalle

...

AND

ANTICIPATORY BAIL APPLICATION NO.854 OF 2023

MARUTI DAGDU RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. A.A. Lomte h/f. Mr. Sudarshan J. Salunke
APP for Respondent – State : Mr. S.N. Morampalle

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CORAM : R. M. JOSHI, J.

DATE : 7th JULY, 2023

PER COURT :

. Heard.

2. Issue notice to respondent in Anticipatory Bail Application No.1086 of 2023. Learned APP waives service of notice on behalf of respondent/State.

3. Applicants in both applications are apprehending arrest in connection with Crime No.120 of 2023 registered with Sonpeth Police Station, Tal. Sonpeth, Dist. Parbhani for the offences punishable under Section 304 (2), 337, 338 of the Indian Penal Code and Section 9 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act.

4. First Information Report came to be lodged at the instance of police officer. It is the claimed therein that the owner of farm house had engaged a contractor for cleaning of septic tank. The said contractor employed six persons and that while performing the said work, five persons died and one survived therein. On the basis of these allegations, offence came to be registered against applicants. Applicant in Application No.854 of 2023 is the person who has suggested the name of the contractor for the purpose of cleaning of the said septic tank from which foul smell was coming. Except for suggestion of name of contractor, there is absolutely no role played by the said applicant in order to attract any of the offences against him.

5. As far as applicant in Application No.1086 of 2023 is concerned, perusal of FIR as well as statement of witnesses it is clear that work of cleaning of septic tank was done not by entering into septic tank, but with the help of bucket it was sought to be cleaned. It further shows that accidentally one Shaikh Saber fell into septic tank and to save him Shaikh Sadiq entered septic tank. He was successful in pushing Saber out of septic tank, however he could not come out of it. In order to save him others entered septic tank one after another, but unfortunately died.

6. This Court finds prima facie substance in the contention of learned counsel for applicants that all unfortunate deceased persons who have died in the said incident are close relatives of applicants and that applicants cannot be said to have carried any *mens rea* committing any crime of this nature in respect of others. It is apparent from statements on record that it could be a case of accident without any fault on the part of present applicants.

7. In view of aforesaid facts and circumstances, liberty of applicants need to be protected. Hence, following order:

ORDER

. Both applications are allowed in terms of interim relief granted vide order dated 30.05.2023 in Anticipatory Bail Application No.854 of 2023.

[R. M. JOSHI]
JUDGE

GGP