

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 908 OF 2023

Sayyad Fazal Sayyad Badshah

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. S. Thombre, Advocate for the applicant.

Mr. V. S. Badakh, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 27th JULY, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 0255/2022 registered with Kranti Chowk Police Station, Dist. Aurangabad, for the offences punishable under Sections 396 and 120(B) of the Indian Penal Code.

2. First Information Report indicates that on 26th October, 2022, at about 4.45 am, it was found that the shutter of Balaji Enterprises was open and dead body of Pashu was found inside. It is also found that theft was committed there. In the CCTV footage it was found that four unknown persons had been towards the godown of Balaji Enterprises.

3. Learned counsel for the applicant submits that after conclusion of investigation, charge-sheet has been filed and that on the basis of statement of co-accused, the present applicant apprehends arrest. It is his contention that the said statement of the co-accused cannot be proved and hence barring the said statement, there is no other evidence to show involvement of the applicant in this crime.

4. Learned APP Opposed the application by contending that the statement of the co-accused is recorded under Section 27 of the Indian Evidence Act and pursuant to the said statement, recovery has also been done. Thus, according to him, such statement also would be relevant to ascertain the complexity of the applicant in this crime. Apart from this, it is submitted that just before occurrence of the incident, there was a phone call between the applicant and accused No. 2. Thus, on the basis of these two circumstances, prosecution claims involvement of the applicant in crime and that having regard to the seriousness of the crime, custodial interrogation of the applicant is sought.

5. In reply to the contention about telephonic conversation between the applicant and accused No. 2, learned counsel for the applicant submits that the applicant and accused No. 2 are having transactions for the period much prior to the occurrence of the incident and that this is not the only communication between them. Thus, according to him, on the basis of such phone call, applicant cannot be said to have been involved in this crime.

6. Perusal of the charge-sheet shows that even it is not the case of the present applicant that he had conspired with the accused for the purpose of commission of said offence. In order to substantiate the said allegation, the only evidence relied upon by the prosecution is the statement of co-accused recorded under Section 27 of Indian Evidence Act. Even if it is accepted that statement of the co-accused is recorded and pursuant thereto some incriminating recovery has been done, such statement would be a weak piece of evidence and in absence of any corroborating material to the same, it is difficult to consider involvement of the applicant in this Crime.

7. As far as phone call between them is concerned, admittedly, this is not the first phone call between them. There is no

dispute about the fact that applicant and accused No. 2 had transactions even prior to the incident in question. Therefore, mere phone call or conversation between them even on the date of the incident will not be an incriminating circumstance against him. Perusal of the charge-sheet shows that the practically investigation into the crime is over. In such circumstances, custodial interrogation of the applicant would not be necessary. Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of applicant in connection with Crime No. 0255/2022, registered with Kranti Chowk Police Station, Dist. Aurangabad, for the offences punishable under Sections 396, 120(B) of the Indian Penal Code, he be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount.
- (iii) He shall attend the concerned police station once in a week.
- (iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) He is further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

dyb