

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1100 OF 2023

1. Marotrao s/o Nagorao Shinde
age 70 years, occ retired
r/o Manatha, Tq Hadgaon
Dist. Nanded
2. Sandeep s/o Marotrao Shinde
age 34 years, occ. Advocate
r/o Manatha, Tq. Hadgaon
Dist. Nanded.
3. Suhas s/o Marotrao Shinde
age 39 years, occ. Service
r/o Manatha, Tq. Hadgaon
Dist. Nanded.

Applicants

Versus

The State of Maharashtra
through Police Inspector
Police Station, Manatha
Tq. Hadgaon, Dist. Nanded.

Respondent

Mr. S. S. Thombre, Advocate for the applicants.
Mr. A. V. Patil, Advocate for the informant.
Mrs. G. L. Deshpande, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 8th AUGUST, 2023.

PER COURT :

1. An offence for murder punishable under Section 302 read with Section 120-B of the Indian Penal Code is registered against the applicants and co-accused in Crime No. 61/2023

registered with Manatha Police Station, Tq. Hadgaon, Dist. Nanded. The question arises before this Court is as to whether liberty of the applicants can be protected by grant of pre-arrest bail or to give fair opportunity to Investigating Agency to conduct custodial interrogation, when there is prima facie material to indicate their complicity in the serious crime like murder pursuant to conspiracy.

2. First informant is the son of deceased Uttamrao Shinde. He reported incident occurred on 2nd June, 2023 when Uttamrao along with his wife went for morning walk, at that time, from Manatha Pati side, one white colour four wheeler bearing registration No. MH 26 BQ 7114 came and had passed by them. At a distance of about 100 meters, it turned back and dashed against the father of the informant from behind. In the said dash, father of the informant died on the spot whereas Damodar Ade who was also walking along with the deceased was injured. It is alleged in the First Information Report that owing to the dispute between deceased's family and family of applicants, the deceased was murdered by dashing a four wheeler against him. There is also a reference about conspiracy being hatched by applicants.

3. Learned counsel for the applicants states that there are disputes between the parties and on account of the said enmity, false implication cannot be ruled out. It is further submitted that initially the name of co-accused Amol Shinde was not revealed by the informant or witnesses which shows that subsequent statements recorded to that effect are afterthought and with intention to implicate applicants in this crime and hence no evidentiary value can be attached to it. It is submitted that applicant No. 1 is aged about 74 years and one of the applicants is a Lawyer and that these applicants do not reside together and for want of any material to indicate that at any time there was meeting of mind between them to hatch conspiracy to kill the deceased, they cannot be connected with crime. It is submitted that by taking disadvantage of the fact that deceased has died in car accident, in order to take revenge against the applicants, they are sought to be falsely implicated in the crime.

4. Learned APP and learned counsel for the informant opposed the application with the submission that here in this case, statements of witnesses are recorded who have candidly stated about having heard about conspiracy of applicants and co-accused to eliminate the deceased. Apart from this, it is submitted that there

are statements of witnesses on record which indicate that the co-accused, who is son of applicant No. 1 and brother of other applicants, had obtained the car involved in the incident from his friend Anup. It is further argued that statements of Anup and Ramakant confirm the said fact. As far as involvement of the very same vehicle in the incident is concerned, reference is made to the statement of Atiq, garage owner, who had repaired the car in question after it was brought to him on 2nd June, 2023. To support the said submission, reliance is also placed on panchanama drawn of seizure of CCTV Footage which indicates that on 2nd June, 2023, at around 5.18 am, the vehicle was seen going towards Manatha village from Manatha Pati and at about 5.23 am and it was seen returning in high speed. The very same vehicle was later on found on Budkhed to Nanded road at around 6.15 am. It is also contended that applicant No. 1 who is regular morning walker, for no reason had stopped coming for walk, only for couple of days before incident. Thus, this also becomes one of the circumstances showing his involvement in the crime. It is submitted that there is substantial and more than enough evidence on record to prima facie hold that there is involvement of the applicants in this crime and in such circumstances, the Investigating Agency cannot be denied custodial

interrogation of the applicants and hence it is not a fit case for grant of anticipatory bail.

5. No doubt, here is the case wherein there is fierce enmity between the parties. It is however, well known that in case of enmity between the parties this may not only lead to commission of crime but it may become a reason for false implication. In such case, the Court is required to be on guard while assessing the material placed before it to form any opinion. There is no dispute about the fact that on 2nd June, 2023, Uttamrao was taking morning walk with his wife. At that time, one white colour four wheeler passed by them and after taking turn came towards them and hit Uttamrao from backside. Statement of Damodar Ade who was walking just ahead of Uttamrao indicates that in a single dash Uttamrao as well as he himself sustained injuries. Perusal of investigation papers shows that there are statements of wife of the informant as well as Damodar Ade to indicate that the person who was driving the car at the relevant time was looking like Amol (co-accused). They stated so as the face of driver was partially covered with white cloth. Learned counsel for the applicants takes exception to the reliability of said statements by

contending that they are recorded belatedly and intended towards false implication of applicants.

6. There are however statements of Anup, Ramakant and Atiq which connect son of applicant No. 1 with the car in question and incident. Statement of Anup indicates that on 1st June, 2023, Amol came to him and asked for his vehicle. He gave the said vehicle to him. It is further revealed that on 2nd June, 2023, Amol brought the car back in damaged condition and it was taken to Atiq who is the garage owner for repair of the said car. Statements of Atiq as well as Ramakant support the said contention. Statements of these witnesses further get corroboration by CDRs of Amol which show exactly the same time when Amol called him as stated by them. It is thus clear that the statements of these witnesses get confirmed with the substantive evidence in form of call records between them. Having regard to this fact, at least at this stage, it is not open for this Court to discard their statements.

7. CCTV footage dated 2nd June, 2023 shows that at 5.18 am the vehicle was seen going towards Manatha village from Manatha Pati side. It came back at around 5.30 am in high speed.

The same vehicle was found to have headed towards Nanded. The statements of Atiq and Ramakant support the theory of prosecution that the said vehicle was taken to Atiq for its repairs. Furthermore, there are statements of witnesses who have identified Amol to be the driver of the vehicle. Most importantly, parts of the vehicle which were broken in the incident and lying on the spot were seized under panchanama. The parts of the vehicle which were taken for repair to the garage are also seized. Both the parts were sent to FSL. Report submitted by FSL clearly shows that the said parts match with each other. Thus, prima facie, there is more than sufficient evidence to indicate that the vehicle which was brought by Amol was the same vehicle which was involved in giving dash to Uttamrao. At least at this stage, there is overwhelming evidence on record to connect Amol with this crime.

8. Amol is the son of applicant No. 1 and brother of other applicants. There are statements of witnesses which indicate that they heard conversation between accused disclosing their intention to eliminate Uttamrao. At this stage, those statements cannot be discarded by this Court on the ground that they were recorded after some time of the occurrence of incident. Needless to say that it is

always difficult to prove criminal conspiracy by evidence as it involves mental process more than physical. In such situation, when there is prima facie material on record to indicate that Amol is involved in killing Uttamrao and there are statements of witnesses indicating possibility of conspiracy, the Investigating Agency must be given an opportunity to carry out thorough investigation by taking applicants in custody.

9. The Hon'ble Apex Court in the landmark judgment in case of Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694 has laid down the parameters which can be taken into consideration while dealing with anticipatory bail which read thus :-

".....The courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case."

It is also held thus :-

".... While considering the prayer of grant of anticipatory bail a balance has to be struck between

two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.”

In view of said observations of the Hon'ble Apex Court, it can be said that where there is prima facie case made out against the applicant showing his involvement in the serious crime like murder, the investigating agency has right of free, fair and full investigation.

10. Applicants were granted interim protection but they cannot take shelter of said order to protect their liberty. At the time of obtaining interim relief, it was projected as if it could be a case of accident because in the incident two persons i.e. deceased as well as another person were injured and that it could be error in driving. Now, after going through the investigation papers, it is clear that at one stroke/dash of the car both deceased as well as injured sustained injuries. Therefore, at this stage, there is no reason to accept that it could be a case of accidental death. Having regard to the serious nature of offence and since custodial interrogation of the applicants is necessary, applicants cannot be granted anticipatory bail. Hence, application is dismissed.

11. Learned counsel for applicants submits that the interim protection granted to the applicants be extended for a period of four weeks.

12. Learned APP and learned counsel for the informant opposed the request on the ground that offence is serious in nature and having regard to the stage of the proceedings, it will not be in the interest of justice to extend said interim order.

13. Since applicants were protected by interim order, an opportunity needs to be given to them to test this order before the Hon'ble Apex Court. However, having regard to the serious nature of offence and stage of investigation, interim order is extended by two weeks only.

(R. M. JOSHI)
Judge

dyb