

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1115 OF 2023

Swapnil s/o Namdeo Thorat

Applicant

Versus

The Superintendent of Police & another

Respondents

Mr. R. R. Karpe, Advocate for the applicant.

Mrs. G. L. Deshpande, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 2nd AUGUST, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 0485/2022 registered with Jamkhed Police Station, Tq. Jamkhed, Dist. Ahmednagar for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. First Information Report shows that the son of the informant who was absconding for five years was found in the village. Later on it was revealed to him that he was assaulted by unknown

person and in the said assault he died. Hence, offence came to be registered against unknown person.

3. Learned counsel for the applicant states that the name of the applicant is not recorded in the First Information Report and having regard to the nature of First Information Report, it can be gathered that the deceased was not possessing good health. It is his submission that the possibility of deceased died for some different reason than alleged assault is not ruled out. It is further contended that charge-sheet has been filed and custodial interrogation of the applicant is not necessary.

4. Learned APP opposed the application by submitting that offence is serious in nature and prima facie there is evidence on record to indicate involvement of the applicant in this crime. In order to substantiate the said submission, she referred to statements of Vishal Magar and Vikas who are friends of present applicant and co-accused. Their statements show that in the previous evening of finding of the dead body of the deceased, it was informed to them that under the apprehension of commission of theft of mobile phone by the deceased, he was beaten with sticks. Their statements further

show that a question was raised by them as to whether he was assaulted brutally or what. At that time, it is stated that he is in a position to speak. Learned counsel for the applicant on this submission stated that the dead body was found at different place than the place where he was assaulted. Thus, according to him, it cannot be said with certainty that in the alleged assault, as referred by the witnesses, the deceased died.

5. The incident in question is not witnessed by the informant and report is lodged against unknown person. Perusal of the post mortem notes clearly shows that death is caused on account of assault caused on the deceased. Thus, there is prima facie material to show that this is a case of homicidal death. Statement of these two witnesses show extra judicial confession of the present applicant. At this stage, there is no reason to discard the said statements. Perusal of the statements clearly indicates that that deceased was assaulted with stick by applicant and co-accused. In such circumstances, prima facie there is more than sufficient material on record to show complicity of the present applicant in the serious crime like murder. Learned APP would be justified in making submission about custodial interrogation for the purpose of recovery

of weapons used in the said assault. In view of these facts and circumstances, this is not a fit case for grant of pre-arrest bail. Hence, application is dismissed.

(R. M. JOSHI)
Judge

dyb