



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

931 ANTICIPATORY BAIL APPLICATION NO. 1391 OF 2023

1. Abhi @ Tushar Dilip Mande
 2. Akash s/o Balasaheb MandeApplicants
- VERSUS**

The State of Maharashtra & anotherRespondents
.....

Mr. N. B. Narwade, Advocate for Applicants
Mr. S. B. Jadhav, APP for the State.
Mr. G. R. Bhumkar, Advcoate holding for Mr. R. P. Bhumkar, Advocate
for the informant.

WITH

ANTICIPATORY BAIL APPLICATION NO. 1392 OF 2023

Akshay Trimbak MandePetitioner.

VERSUS

The State of Maharashtra & anotherRespondents
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Mr. N. B. Narwade, Advocate for Applicants
Mr. S. B. Jadhav, APP for the State.
Mr. G. R. Bhumkar, Advcoate holding for Mr. R. P. Bhumkar, Advocate
for the informant.

CORAM : R. M. JOSHI, J.

DATE : 19th DECEMBER, 2023.

PER COURT :

1. Both the applicants apprehend arrest in connection with
Crime No. 0673/2023 registered with Shrigonda Police Station,

District Ahmednagar for the offence punishable under Section 302 read with Section 34 of Indian Penal Code.

2. First informant is mother of Samadhan (deceased). She lodged report on 17th July, 2023 informing police that her son Samadhan aged 19 years was working as a driver on the tractor of Deelip. She claimed that there were disputes between them and hence since May 2023, Samadhan left the said job. It is claimed that prior to 7-8 days of the incident, Deelip came to her residence calling Samadhan for the work. Since against dispute arose between them, Samadhan came back home without working. On 14th July, 2023, at 7.30 pm, Deelip and Pandurang came to fetch Samadhan. Samadhan refused to go along with them. Deelip insisted/requested him to come. Informant therefore told him to go along with them. On 15th July, 2023 at 6.00 am, Santosh, brother of Samadhan, received phone call from Deelip. He was called to his house at Madhewadgaon. He was told there that Samadhan has hanged himself. Post Mortem was conducted. Informant was not satisfied with the Post Mortem conducted at Rural Hospital, Shrigonda and hence again Post Mortem was conducted at Sasoon Hospital, Pune, wherein cause of death was stated to be "hanging associated with

blunt trauma to head and chest.” Informant claims that her son Samadhan was murdered and allegations are made against applicants and co-accused.

3. Learned counsel for applicants submits that there is delay in lodging of the report and there are no specific allegations against applicants of committing any overt act in the incident in question. It is contended that even if Post Mortem of the corpse was conducted twice, there is no conclusive evidence to show that it is a case of homicidal death. According to him, it is more suicidal than homicidal. He further submits that applicant Akash has placed on record evidence to show that he was present at Pune at the relevant time at the relevant time which shows his false implication in the crime. According to him, this also leads to the conclusion that other applicants are also sought to be falsely involved in the crime.

4. Learned APP and learned counsel for the informant opposed the application by citing seriousness of the crime and stage of investigation. According to them, there is no delay in the report as Post Mortem was required to be carried out twice. By referring to the Post Mortem notes and cause of death, it is submitted that prima

facie, this is a case of homicidal death. According to them, since no one has witnessed the incident, it is a matter of investigation to ascertain as to who are involved therein.

5. Perusal of record shows that this is based on circumstantial evidence. There is allegation against present applicants of they along with co-accused having committed murder of Samadhan. Post Mortem conducted in Sasoon Hospital shows death due to hanging associated with blunt trauma to head and chest. At this stage, therefore, this Court can not conclude that it is not a case of murder but suicidal one. Prima facie, there is evidence to show that offence under Section 302 of Indian Penal Code could get attracted against accused persons. So far as applicants in Anticipatory Bail Application No. 1391/2023 are concerned, there is nothing to show that they were not at spot of incident. It would be within the right of Investigating Agency to interrogate them. Once serious crime is alleged against them and there are no overwhelming circumstances to protect the liberty of applicants, they do not deserve pre-arrest bail. It is pertinent to note that since no one has witnessed the incident in question, there cannot be specific allegation against any one and it is matter of investigation.

6. As far as applicant in Anticipatory Bail Application No. 1392/2023 is concerned, he comes before the Court with a specific stand that he was present at Pune which is at a distance of more than 150 km from the spot of the incident. To substantiate said defence, he placed reliance on CCTV footage. Further investigation carried out in this regard which indicates that CDR of this applicant shows his presence at Pune upto 8.47 pm on 14th July, 2023 and again at 4.14 am. There is nothing revealed in investigation that he had left the said place at relevant time. Hence, strong evidence is placed by this applicant in order to hold that he could not be present on the spot of the incident. When this applicant has brought on record clinching evidence to show his presence at different place than spot of incident which is at distance of more than 150 km, such material can not be ignored. Moreover, even from investigation carried out till date, i.e. CDR indicates his presence at Pune. He, therefore, has made out case for protection.

7. In view of above, Anticipatory Bail Application No. 1391/2023 stands dismissed. Anticipatory Bail Application No. 1392/2023 stands allowed in terms of interim order. Applicant in

Anticipatory Bail Application No. 1392/2023 is directed to attend the concerned police station once in a fortnight till filing of charge-sheet.

8. Learned counsel for applicants in Anticipatory Bail Application No. 1391/2023 seeks continuation of interim relief. Learned counsel for informant and learned APP opposed this request. Learned APP submits that for purpose of effective investigation, custody of the applicants is required at earliest.

9. Since liberty of applicants was protected by order of this Court, in order to enable them to move before the Hon'ble Apex Court, said order is extended for a period of three weeks from today.

(R. M. JOSHI)
Judge

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