

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.1415 OF 2022

**TANAJI BALAJIRAO NEVHAL PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Senior Adv. Mr. Rajendra Deshmukh a/w
Adv. Shriram Deshmukh I/B Adv. Devang Deshmukh
APP for Respondent: Mr. S. P. Sonpawale

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CORAM : S. G. MEHARE, J.

DATE : 21.02.2023

PER COURT :

1. Heard the learned senior counsel for the applicants and the learned A.PP for the Respondent State.

2. The prosecution has a story that the incident happened on 31st December, 2021 in one flat. The deceased and the accused named in the first information report were together. They had a quarrel and then the deceased was thrown down from the Balcony of flat No.14. The first informant, the wife of the deceased heard the noise of beating to her husband. Her husband was requesting the accused Soapn not to beat him. The deceased died due to head injury. The applicants were allegedly involved in the crime as it has been transpired from the

statement of the co-accused.

3. The learned senior counsel for the applicants would submit that the applicants have not been named in the F. I.R. However, after thought they being the brothers of accused Sopan have been involved in the crime. They are the active members of the social organization. They used to involve in agitation. Therefore, some cases against them are natural. That does not mean that the applicants were involved in the present crime. There is no eye witness to the incident showing presence of the accused or involvement of the accused in the crime. The first informant did not hear the voice of the applicants through phone. Previously, the applicants were released on anticipatory bail by this Court. They have attended the police station for three months. However, during the pendency of the anticipatory bail application the charge sheet was filed, hence, as per the order of this Court the applicants approached the Sessions Court for anticipatory bail. Considering the material placed on record, the prosecution has no evidence to show the involvement of the applicants in the crime. He also argued that considering the nature and the day of the incident, the possibility of falling down under the influence of liquor cannot be ruled out. He also argued that the injury as observed in the *post mortem* may be possible by falling from the height. Therefore, the

applicants may be protected by the anticipatory bail.

4. The learned A.P.P has strongly opposed the application. He would argue that the incident happened when the accused were together. The deceased was mercilessly beaten. The wife of the applicant had heard the noise on the spot of incident on phone of her husband. One witness Anusaya had been to the spot of the incident as her son was also in flat No.14. There are antecedents to the discredit of the applicants. They are influential persons. They were involved in the crimes. Considering the gravity of the offence, the custodial interrogation of the applicants is essential.

5. In order to have custodial interrogation, the prosecution would have *prima facie* case to believe the involvement of the applicants seeking anticipatory bail. The F.I.R specifically reveals that when the deceased did not turn up home, his wife made him a phone call. That time she heard that her husband was being beaten by the co-accused and he was seeking for mercy. She heard the specific name of other co-accused. Her statement is silent about the presence of the applicants on the spot of the incident. So called eye witness Anusaya also stated presence of the three persons when she went to flat where the deceased and other co-accused were sitting. Her statement does

not reveal that she witnessed the actual incident except beating the deceased in the room.

6. After having going through the charge sheet, the prosecution has no evidence except the words of the co-accused. To satisfy the involvement of the applicants, the prosecution has also no material to show that the conspiracy was plotted on the direction of the present applicants the offence has been committed. They attended the police station for three months. So, the police must have done necessary investigation. Be that as it may, taking into consideration the facts and material collected by the police, the Court is of the view that, the custodial interrogation of the applicants is not essential. They deserve anticipatory bail. Hence, the following order :

- (i) The application is allowed.
- (ii) In the event of arrest, the applicants (1) Tanaji Balajirao Nevhal Patil (2) Angad Balajirao Nevhal Patil and (3) Shankar Balajirao neval Patil be released on bail, on executing P. B. and S. B. of Rs. 50,000/- (Fifty thousand) each with one solvent surety each in the like amount, in Crime No. 3 of 2022 registered with Bhagyangar Police Station, Nanded, District Nanded for the offences punishable under Sections 302, 504, 323 read with Section 34 of the Indian penal Code on the conditions that :-

- (a) They shall not tamper with the prosecution witnesses.
- (b) They shall attend the police station as and when called by the Investigating Officer for the period of four months from today.

(S. G. MEHARE)
JUDGE

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