

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1767 OF 2023

Prakash Kanthiram Rathod ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. P. P. Giri, Advocate for the Applicant.

Mr. V. S. Badakh, APP for Respondent.

Mr. R. M. Lone, Advocate for informant to assist APP.

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 23, 2023

PER COURT:

1. At the outset, Mr. R. M. Lone, learned Counsel, states that he has instructions to appear on behalf of informant to assist APP.

2. Having regard to the nature of offence, permission is granted.

3. Applicant apprehends arrest in connection with Crime No. 199 of 2023 registered with Umri City Police Station, District Nanded for the offences punishable under Sections 302, 109 read with Section 34 of the

Indian Penal Code.

4. Subhash Chavan gave report to the police stating that his brother Avinash had intimate relations with a lady for about 10 to 15 years. Their relatives were knowing about the same. They stayed away for a month. Husband and brother of lady found them out and thrashed them. They were brought to the village. Lady was send to her parental home. After Avinash was brought to village, he was assaulted. It is alleged that at the instance aid and instigation of present Applicant, the said assault was caused. Due to the injuries caused in the said assault, deceased died at 05.00 pm on 30.07.2023.

5. Learned Counsel for the Applicant submits that Applicant is police personnel and at the relevant time he was present at the place of his work i.e., at Chakan Police Station, Dist. Pune. It is submitted that considering the distance between the place of incident and the work place of Applicant, it is practically impossible that he is actually involved in the crime in question. It is submitted that in fact informant and

his brother had thrashed the deceased to death. To support said submissions, he placed reliance on photographs placed on record. According to him, the same has been done in order to grab the property of the deceased. Argument is also made that the deceased was never taken to any hospital and the death has been caused due to not providing proper medical treatment. It is submitted that present Applicant is being blackmailed by the informant for extorting money from him and in order to substantiate the same, transcript of conversation is placed on record. It is his submission that in any case there is no evidence to show complicity of the Applicant in this crime. Hence, he is entitled for pre-arrest bail.

6. Learned APP and learned Counsel for informant opposed the said contentions by submitting that the Applicant is the brother of lady who eloped with deceased. It is submitted that there are statements of witnesses from State of Telangana which indicates that the deceased and the lady were brought from the said place and at that time also they were assaulted mercilessly. It is submitted that as far as present

Applicant is concerned, there are number of calls exchanged between him and accused which indicates that he was abetter and instigator in the said assault. By referring to the investigation papers, it is submitted deceased before his death was taken to three hospitals wherein he was treated. Reference is also made to post mortem notes in order to show that this is a case of homicidal death.

7. Perusal of the record indicates that deceased eloped with the sister of present Applicant. Statements of independent witnesses from State of Telangana indicates that co-accused went to said place and brought deceased and the lady to village. They also stated about the deceased being assaulted there too. Record further indicates that even after he was brought to village, again he was subjected to assault. Though, there is some material on record to indicate that even brother of the informant is involves in causing of assault but only because he has not been made an accused, will not become a ground for enlargement of the Applicant on pre-arrest bail. As far as present Applicant is concerned, though there is nothing on

record to indicate that he was present at the spot, however, the record sufficiently demonstrates that there were number of calls continuously exchanged between Applicant and co-accused even at the time of occurrence of incident of assault on deceased. There are statements of witnesses which indicate that co-accused were instigated by present Applicant for causing assault to the deceased. Thus, it is not the case there is absolutely no evidence on record to connect the Applicant with this crime, which is serious in nature.

8. As far as contention of the Applicant about the deceased not been taken to any hospital is concerned, there is material evidence on record to indicate that at least to three different hospitals deceased was taken for treatment. Thus, there is no substance to say that the deceased did not die due to the injuries caused to him but for want of proper medical treatment. Offence alleged against present Applicant and co-accused is punishable with life imprisonment or death penalty.

9. Having regard to the serious nature of offence and in view of fact that the investigation is at preliminary stage, this Court finds it to be not fit case for protecting liberty of the Applicant. Hence, Application stands dismissed.

(R.M. JOSHI, J.)

Malani