



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

958 ANTICIPATORY BAIL APPLICATION NO. 1889 OF 2023

Danish Fakhruddin Sidhiqui

....Applicant

VERSUS

The State Of Maharashtra

.....Respondent

Mr. A. D. Hande, Advocate for Applicant.

Mr. M. K. Goyanka, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 14th DECEMBER, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 398/2022, registered with Vimantal Police Station, Nanded, District Nanded, for the offences punishable under Sections 302, 364, 341, 143, 147, 148, 149, 120-B of Indian Penal Code and Section 135 of Maharashtra Police Act.

2. First informant is father of deceased who reported to the police that on 22nd November, 2022 he received information from unknown person about his son lying in injured condition in a crematory. He, therefore, went to the spot where he found his son in injured condition. When he questioned about the same to him, it

was disclosed by deceased that he along with a girl residing in their lane had been to one hotel at Namaskar Chowk. From their 8 to 10 unknown persons took them to crematory where he was assaulted by them. In the said incident, son of the informant died.

3. Learned counsel for applicant submits that the applicant is juvenile in conflict with law as on the date of the incident as his age was 17 years and 10 months. It is his submission that except for the statement of co-accused, there is no evidence to connect him with this crime and the said evidence is not admissible in law. It is also sought to be argued that in view of provisions of Juvenile Justice (Care and Protection of Children) Act, the past interest of the child needs to be considered and hence he is entitled for anticipatory bail.

4. Learned APP opposed the application by citing seriousness of the crime. It is his submission that apart from the statement of co-accused, there is independent evidence which shows presence of applicant on the spot. According to him, photographs of the spot indicate his presence along with a girl who was taken to the said spot with deceased. It is also argued that there are CDRs indicating communication between present applicant and co-

accused. According to him, prima facie, this evidence is more than sufficient to connect applicant with the crime. It is submitted that even if it is accepted that applicant is a juvenile in conflict with law, once his involvement in serious crime like Section 302 of Indian Penal Code is seen, he is not entitled for pre-arrest bail.

5. Here is the case wherein two persons from one community abducted and assaulted boy from different community for the reason he was talking to a girl belonging to community of accused. In the said incident owing to the injuries caused in assault, boy died. Prima facie, offence of murder is made out.

6. There cannot be any dispute with regard to the fact that if applicant is found to be juvenile in conflict with law, he would be entitled to all protections provided by Juvenile Justice Act. However, that will not entitle him to seek anticipatory bail if his involvement is seen in serious crime like murder. This is a case wherein it is alleged that present applicant along with co-accused had forcibly taken a boy and a girl to secluded place like crematory where the boy was mercilessly assaulted. There are 18 injuries found on the person of the deceased which show gravity of assault caused on him. As far

as applicant is concerned, apart from the statement of co-accused there is evidence in the form of photograph showing presence of the applicant on the spot. From the photograph prima facie it is seen that he was consciously present at spot, speaking to the girl and he cannot be considered as a passer by. He also taken the girl forcibly along with deceased to the spot. Moreover there is CDR available indicating communication between applicant and co-accused. Thus, it is not a case wherein prosecution is relying solely on the statement of co-accused which would not be admissible in evidence to connect application with this crime. This Court is of the view that there is sufficient evidence on record to indicate involvement of applicant in this crime. Offence is serious in nature. Merely because the applicant is juvenile in conflict with law, he cannot be granted anticipatory bail in view of his prima facie involvement in the serious offence like murder. Hence, application is rejected.

(R. M. JOSHI)
Judge

dyb