



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.102 OF 2023**

Manjar Mahammad Juikar ... Applicant
versus
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.93 OF 2023**

Payal Chandan Jain ... Applicant
versus
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.231 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.93 OF 2023**

Pushpa Prakash Gandhi ... Applicant/Intervener
and
Payal Chandan Jain ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Kuldeep Patil i/by Ms. Saili Dhuru for Applicant in ABA 102 of 2023.
Mr. Gaurav Parkar with Mr. Shantanu Kadam, Ms Diksha Patil, for Applicant in ABA 93 of 2023.
Mr. Shantanu Phanse, for Applicant in IA 231 of 2023.
Ms. Ashwini Takalkar, APP for State.
Mr. Balasaheb Khade, PI, Raigad – Alibag present.

CORAM: N.J.JAMADAR, J.

DATE : 11 SEPTEMBER 2023

P.C.

1. These applications for pre-arrest bail are preferred in connection with
C.R.No.174 of 2022 registered with Murud Police Station initially for an offence

punishable under Section 304 read with Section 34 of Indian Penal Code. Later on, a charge under Section 302 of IPC has been added.

2. Accused No.1 – Applicant in ABA 93 of 2023 is the wife of ‘C’, brother of the first informant. Accused No.2 – Applicant in ABA 102 of 2023 is allegedly the paramour of accused No.1. The marriage of accused No.1 was solemnized with ‘C’ in the year 2006. ‘C’, his brother and son were suffering from genetic disorder of muscular dystrophy.

3. After few years of marriage, Accused No.1 allegedly established relationship outside the marriage with accused No.2. The accused No.1 had allegedly eloped with accused No.2 on couple of occasions, the last being in the year 2015. ‘C’ had, however, allowed accused No.1 to resume matrimony. Yet there were frequent quarrels between the accused No.1 and ‘C’.

4. On 25 May 2022 the first informant’s elder brother informed her that ‘C’ passed away. The first informant, her husband and children reached Murud. The first informant alleged on 26 May 2022, her sister ‘V’ who was staying with Accused No.1, and the deceased, informed the first informant that the accused No.1 was not taking good care of the deceased and used to administer medicines to the deceased. Thereupon, her daughter checked medicine box, took out the photographs of the strips of medicines and, upon inquiry, it turned out that except 2-3 strips, most of the medicines were sleep inducing.

5. On 14 June 2022, when the first informant had again been to the house of the deceased at Murud and searched for any suspicious material, the first informant allegedly found an agreement executed between Accused No.1 and the deceased in the year 2015, a chit in the hand writing of accused No.1 and four mobile phone handsets. Those articles were carried back to Mumbai. Upon the persual of the chats in the mobile phone, it transpired that the accused No.1 had hatched a conspiracy with accused No.1 to administer an overdose of sleeping pills and kill the accused. The first informant also claims to have found a photograph of a note in the hand writing of the deceased in the mobile phone of the deceased.

6. Apprehending arrest, the applicants approached the Court of Session at Raigad Alibag. As the learned Additional Sessions Judge declined to exercise discretion in favour of the applicants, these applications are filed.

7. On 12 January 2023, in ABA No93 of 2023, this Court was persuaded to grant interim protection to accused No.1. The same dispensation was given to accused No.2 in ABA No.102 of 2023 by an order dated 13 January 2023. The first informant filed an application for Intervention being IA No.231 of 2023. Mr. Phanse, learned Counsel, came to be appointed to espouse the cause of the first informant.

8. I have heard Mr. Parkar, learned Counsel for the Applicant in ABA 93 of 2023, Mr Patil, learned Counsel for the Applicant in ABA 102 of 2023, learned APP for the State and Mr. Phanse, learned Counsel for the Intervener.

9. Mr. Patil submitted that indisputably the deceased was suffering from muscular dystrophy, a genetical disorder. The first informant in order to wreak vengeance on account of property dispute has lodged false and concocted report making wild allegations. Taking the court through the material on record which, according to Mr. Patil, demonstrates inherent improbabilities of the prosecution case, Mr. Patil submitted that no case for an offence punishable under Section 304, much less under Section 302, of the IPC is made out.

10. Mr. Parkar supplemented the submissions of Mr. Patil.

11. In opposition to this, the learned APP would urge that the transcript of the telephonic conversation, bears out prima facie complicity of the applicants – accused Nos.1 and 2.

12. Mr. Phanse, learned Counsel for the Intervener submitted that the material on record, if considered cumulatively, makes out a strong prima facie case against the applicants. Laying emphasis on the alleged conversation between Accused Nos.1 and 2, evidenced by the transcript, Mr Phanse would urge that the custodial interrogation of the applicants is warranted to facilitate complete and effectual investigation.

13. The facts which prima facie emerges are that : (1) The deceased, his brother and even the son of the deceased had/have been suffering from muscular dystrophy, a genetical disorder. (2) The accused No.2 was allegedly in a relationship

outside marriage with accused No.1 since long and the last incident of alleged elopement occurred in the year 2015. (3) The accused No.1, despite the alleged incident and an agreement to dissolve marriage in the year 2015 itself, was allowed to resume cohabitation. (4) The deceased was admitted in the maternity home of Dr. Kalyani on 19 May 2022 and discharged on 20 May 2022 and the treatment continued till 22 May 2022. He was then allegedly suffering from disentry. (5) The deceased passed away on 25 May 2022.

14. From the perusal of the material on record, especially the allegations in the FIR and the statements of the first informant, her sister 'V' and daughter, it appears that the first informant entertained suspicion on the very next day of the occurrence i.e. 26 May 2022. On that day, the photographs of the empty strips of medicines were allegedly taken and it transpired that those were sleep inducing medicines. On 14 June 2022, in a subsequent visit, the first informant claims to have found above incriminating material. It is necessary to note that all his allegedly incriminating material came to be seized on 3 January 2023 only. The first informant claimed that she had carried the aforesaid material and mobile phone handsets, which she found on 14 June 2022, with her to Mumbai. In the written complaint filed by the first informant on 18 August 2022, the first informant seems to have raised suspicion about the complicity of accused Nos.1 and 2, and referred to the aforesaid material.

15. Mr Patil and Mr. Parkar referred to the proceedings initiated by the

accused No.1 and her son to obtain succession certificate and the objection lodged by the first informant to mutate their names to the agricultural lands on 13 June 2022 and the order passed by the Tahasildar on 20 March 2023 and the reports lodged by the first informant against her another brother Ashok and vice-versa, to draw home the point that the allegations have been made on account of property disputes.

16. At this stage, it is not necessary to delve into the aforesaid submissions. First and foremost, in the context of the charge of Section 302 of IPC, in Bail Application No.661 of 2023 of co-accused Bharati, sister of accused No.1, this Court has observed that prima facie, there is no evidence of homicidal death. This factor deserves consideration. Second, there is a considerable delay in lodging the report when the first informant allegedly entertained suspicion on the next day of the death of the deceased. Thirdly, all the material which prosecution now seeks to bank upon was retrieved from the house of the deceased on 26 May 2022 and 14 June 2022. Prima facie all this material lay with the first informant till it came to be seized on 3 January 2023.

17. From this standpoint, at this juncture, reliance by the prosecution on the aforesaid material to connect the applicants with the alleged offences appears contentious. The alleged relationship outside the marriage between accused Nos.1 and 2, which allegedly constituted the motive for the alleged offences, is required to be appreciated in the light of the prima facie long standing relationship and alleged

condonation of the act, by the deceased. If viewed in the light of undisputed fact that the deceased had been suffering from muscular dystrophy, which according to Dr. Kalyani, was untreatable, the observations of this Court in a connected bail application that prima facie there was no material to show the homicidal death of the deceased, renders the claim of the applicants for pre-arrest bail justifiable. Dr Kalyani has stated that when he examined the deceased, upon being informed that the deceased was motionless, there were no marks of injuries, there was no sign of unnatural death, nor any forth was coming out of his mouth. The property dispute adds an element of motive for accusation. I am, therefore, inclined to exercise discretion in favour of the applicants.

18. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Manjar Mahammad Juikar and Payal Chandan Jain in connection with C.R.No.174 of 2022 registered with Murud Police Station, the Applicants be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to the Murud Police Station on every alternate Sunday from 10.00 a.m. to 1.00 p.m. for a period of two months.

(iii) The Applicants shall not tamper with the prosecution evidence and/or

give threat or inducement to the first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

(iv) The Applicants shall furnish their permanent address and contact details to the Investigating Officer and intimate the change, if any.

(v) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(vi) The Applications stand disposed.

(vii) Interim Application No.231 of 2023 also stands disposed.

(N.J.JAMADAR, J.)