

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1273 OF 2023

Ajit @ Gotya Ganesh Dorge

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Ashok Mundargi, Senior Advocate i/b. Mr. Sandeep Salunkhe,
for the Applicant

Mr. S.H. Yadav, APP, for the Respondent/State.

API. Bawkar, Yavat police station.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 8, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. This application is preferred seeking pre-arrest bail in
connection with C.R. No.693 of 2023 registered at Yavat police
station for the offences punishable under section 302 read with 34
of Indian penal Code, 1860.

3. The first informant is the father of the deceased. He lodged the
report with the allegations that on 9th August, 2021 at about 5.30
pm while returning home, his mother in law Shakuntala informed
him that the deceased had a quarrel with the wife of Balu Dorge
and, in that connection, the deceased was assaulted by somebody
and he was lying near the field of Balu Dorge. The deceased was

found lying in an injured state. He had sustained bleeding injuries. The deceased was brought to Sasoon Hospital, Pune.

4. The first informant was not in a proper frame of mind. Thus, the first informant gave the history of vehicular accident. The deceased was discharged on 12th August, 2021. However, on 13th August, 2021, the deceased had informed the first informant that on 9th August, 2021 co-accused Balu, his brother Rahul and Aditya had assaulted him in their field by means of iron rod and sticks. On 13th August, 2021 as the condition of the deceased deteriorated, he was again shifted to the hospital. However, the deceased was declared dead.

5. It seems that, in a supplementary statement, the applicant and co-accused Sameer Dorge were also named as assailants apart from the three named accused.

6. Apprehending arrest, the co-accused Sameer had approached this Court. By an order dated 31st March, 2023 in ABA No. 2462 of 2021 this Court was persuaded to grant pre-arrest bail to the co-accused Sameer.

7. Mr. Mundargi, learned senior counsel for the applicant submitted that the applicant is similarly circumstanced and as the role attributed to the applicant in the supplementary statement of the first informant and the statement of Shakuntala, is identical.

Therefore, the applicant also deserves exercise of discretion.

8. It may be appropriate to reproduce paragraphs 4 and 5 of the order dated 31st March, 2023.

4] On 29 October 2021, this Court passed the following order :

“Heard learned Counsel for the applicant and learned APP.

2 The applicant is apprehending arrest in C.R.No. 693 of 2021 registered by Yavat Police Station, Pune, for the offences under Sections 302, 143, 147, 148, 149 of the Indian Penal Code.

3 It appears from the FIR dated 14/08/2021 that on account of earlier dispute accused named in the FIR, assaulted the son of informant by means of iron rod and stick on abdomen, hands, legs and eyes and caused his death.

4 It may not be out of place to mention here that while lodging the FIR dated 14/08/2021, the name of the present applicant was not given. It is only after one month i.e. on 14/09/2021 the informant gave supplementary statement and thereupon the present applicant came to be roped in.

5 There is observation of the learned trial Court at para 5 to the effect that “on 14/09/2021 the informant has given supplementary statement to the police wherein he stated that on 13/08/2021 deceased Mangesh told about the incident that above three accused with Sameer Dorge and Ajit Dorge has also assaulted him. The informant further stated that because of mental stress, he skipped to mention the names of Sameer Dorge and Ajit Dorge in the FIR. Based on the said supplementary statement, police have added name of the present applicant in the said crime”. From the observations, it is more than clear that on

13/08/2021 the informant was told about the role of the present applicant and despite that while lodging the report on 14/08/2021, he failed to narrate the complicity of present applicant in the alleged crime. Even assuming the explanation given by the informant to be correct, still he had ample opportunity to approach the concerned police station immediately thereafter within reasonable time and inform the investigation officer about the role of applicant. However, the informant did not do so and waited for almost a month. In my considered opinion, this circumstance is sufficient to grant ad-interim protection to the applicant. Hence, the following order.

ORDER

(i) In the event of arrest of the applicant/accused – Sameer Maruti Dorge in C.R.No. 693 of 2021 registered with Yavat Police Station, Pune, for the offences punishable under sections 302, 143, 147, 148, 149 of Indian Penal Code, the applicant be enlarged on bail on his furnishing PR & SB in the sum of Rs.20,000/- with one or two sureties.

(ii) The applicant/accused shall make himself available for interrogation by a police officer of concerned police station as and when required.

(iii) The applicant/accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of case so as to dissuade him from disclosing such facts to the Court or to investigating officer.

(iv) Issue notice to the concerned police station, returnable on 3rd December, 2021.

(v) This order shall remain in force till the next date.

(vi) Parties and all concerned to act on

authenticated copy of this order duly issued by Sheristedar of this Court.”

5. According to the prosecution, the alleged incident of assaulting the deceased took place on 9 August 2021. After the alleged incident, the deceased was admitted in Sassoon Hospital. The complainant, who is the father of the deceased, at the time of admitting the deceased in the hospital, stated the cause of injuries sustained by the deceased to be accidental fall. The deceased was thereafter discharged on 12 August 2021, however, died on the very next day i.e. on 13 August 2021, due to certain internal complication caused by the injuries sustained by him. The FIR thereafter came to be lodged on 14 September 2021. The applicant was however, not named in the FIR as assailant though according to the complainant, the deceased had disclosed the names of the assailants to him on 12 August 2021.

9. The learned APP submitted that the PM report indicates that the deceased had met a homicidal death. As many as 28 external injuries were found on the person of the deceased. Therefore, the fact that the first informant had initially narrated the history of road accident does not detract materially from the prosecution. The submission that the deceased had met a homicidal death on account of the injuries sustained in the occurrence prima facie appears sustainable.

10. The learned APP, however, fairly submitted that it would be difficult to urge that the role attributed to the applicant is distinct from that of Sameer Dorge, to whom pre-arrest bail has been granted.

11. The reasons which weighed with this Court in granting pre-arrest bail to Sameer apply with equal force to the claim of the applicant. Yet, I have appraised the material on record to arrive at a satisfaction that a case for pre-arrest bail is made out.

12. As noted above, the cause of assault attributed to the co-accused was not disclosed to the Medical Officer or the authorities till the deceased succumbed to the injuries. Instead, it was reported that the deceased had met with an accident. Secondly, in the first information report, the informant claimed to have learnt about the alleged incident from Shakuntala who stated that unknown persons had beat the deceased. Thirdly, the first informant claimed that three persons were named by the deceased as the assailants. Fourthly, the name of the applicant and co-accused Sameer surfaced at a later point of time. Fifthly, Shakuntala endeavored to be a witness to the occurrence though the first information report suggests that she was also apprised about the incident by somebody.

13. In the aforesaid view of the matter, I find substance in the submission of Mr. Mundargi that there is no qualitative difference between the role attributed to the applicant and Sameer.

Hence, the following order.

ORDER

1] In the event of arrest in C.R. No.693 of 2023 registered at Yavat police, the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

2] The applicant shall cooperate with the investigation and attend Yavat police station as and when directed.

3] After the charge sheet is lodged, the applicant shall attend Yavat police station once in a month on first Saturday in between 10 am to 1 pm till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)