

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1249 OF 2023

Deepak Kondiram Botkondle	...Applicant
vs.	
The State of Maharashtra	...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 1781 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 1249 OF 2023**

Mahendra Kashinath Botkondle	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Ashok Mundargi, Senior Advocate i/by Mr. A. R. Pitale -
Advocate for the Applicant in ABA 1249 of 2023
Mr. A. S. Khandeparkar- Sr. Advocate a/w Rohit Mahadik, Rushikesh
Bhagat, Vaibhav Kulkarni, Farhan Shaikh, Saurabh Mittal, Apoorva
Khandeparkar i/by Khandeparkar and Assoc. - Advocate for
Applicant/Complainant in IA 1781 of 2023
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 04th MAY, 2023

P. C. :-

INTERIM APPLICATION NO. 1781 OF 2023

1. Heard learned Advocate for the Applicant/Complainant.
2. The first informant wants audience, interim Application

is filed. Intervention is allowed. Accordingly, interim application is disposed of.

ANTICIPATORY BAIL APPLICATION NO. 1249 OF 2023

3. Heard learned Senior Advocate Shri Mundargi for the Applicant, whose name mentioned as accused no. 6. He is practicing advocate. Also heard learned Senior Advocate Shri Khandeparkar for the first informant-Mahendra and also heard learned APP Shri Dedhia for the Respondent-State.

4. There was an election for the post of Director of Khativali – Vasind Seva Sahakari Society on 19/03/2023. Several forms were filled in by various candidates. One of them was one Ramchandra Kashinath Botkondle. Though he was elected, he succumbed to the injuries caused to him during procession organized in the evening of 19/03/2023. One Vilas Dattu Partole contested the election but he lost. Apart from them, the present Applicant and his brother Dinesh also filled in nomination forms, however they have withdrawn.

5. Much is argued about time of the incident that is actually when it did happened. As per F.I.R. No. 58 of 2023 in which the Applicant is seeking anticipatory bail, the incident took place at about 8.30 p.m.. Whereas there is counter F.I.R. filed by Ganesh

Patrole, who is a brother of the losing candidate Vilas. As per said F.I.R., the timing of the incident is about 7.30 p.m.. However as per both the F.I.R.s the place of the incident is one and the same i.e. in front of the house of Ganesh Partole.

6. In the F.I.R. registered by Ganesh, the person to whom serious injuries caused is one Rajesh Sutar at the instance of one Kaluram Krushna Kadav in his stomach and there are serious injuries.

7. On complaint by Ganesh Partole F.I.R. is registered at C.R. No. 57 of 2023 at Vasind Police Station. The offence under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504, 506 of the Indian Penal Code and Sections 37 (1), 135 of Maharashtra Police Act.

8. The Anticipatory Bail Application filed by this Applicant was rejected by the Court of Additional Sessions Judge, Kalyan.

Learned Senior Advocate Shri Mundargi raised following points :-

- (i) The Applicant was not present at the spot. To support his contention, he invited my attention to the report filed by the Police before the Sessions Court at Kalyan and it is at page no. 71 dated 13/04/2023 and more specifically the grounds at

Serial No. 10 and Serial No. 12. It mentions about collection of the CCTV footage from the cameras installed in the staircase of the building in which the present Applicant is having his office.

- (ii) Without admitting, even though it is presumed that the Applicant is present, except referring him there are no allegations of participation in the crime.
- (iii) The story disclosed by the first informant Mahendra is not entire correct story but in fact there is a counter version also which is referred in the F.I.R. filed by the Ganesh Partole.
- (iv) According to him, when there is a counter F.I.R. mere reference in the F.I.R. is not sufficient unless there is a specific allegation showing the involvement.

9. Whereas according to the learned APP, there are seven eye witnesses who have stated that the Applicant was very much present at the spot. According to him, though these statements are on the similar line to what is stated in the F.I.R., they do suggest the presence of the Applicant. According to him, CCTV footage by way of pen drive are seized as per panchnama dated 06/04/2023.

10. Whereas learned Senior Advocate Shri Khandeparkar submitted that this incident has background of the election and

though the Applicant has not contested the election certainly he filed nomination form and Vilas Partole from his side lost the election. According to him, even though there is no specific allegation, F.I.R. do suggest that after the deceased Ramchandra Botkondle fallen on the ground, he was beaten with the fists and blows by all persons which includes the present Applicant also.

11. Furthermore there is an allegation that all these persons have beaten one Bharati Kadav when she tried to save the said Ramchandra. According to him, the offence is serious and the contention raised cannot be accepted at this preliminary stage of investigation. It is true that when there are counter F.I.Rs, the approach of the Court generally is not the same approach when Court is dealing with only one F.I.R..

12. Learned Senior Advocate Shri Mundargi tried to impress with his submission by pointing out the various timings mentioned in the report (ground nos. 10 to 12, at page no. 74). On the basis of the CCTV footage collected in the pen drive, the Police have noted down various timings in which the Applicant left from that building, again when he entered that building, and again when he went out of the building. He also tried to argue that 'the power location of the

mobile handset of the Applicant could not be found out as contended by the Police' cannot be accepted. He produced on record the summary of the history of call details from the cell phone of this Applicant. There is one incoming call by name one Barik Mama, who is real brother of Vilas. He is one of the accused and Applicant received his phone at 20.53 hours. His contention is that thereafter only the Applicant left the building at about 20.56.02 as mentioned in the sub clause (4) of the ground No. 10, on page no. 74.

13. Learned APP contended that the timing of the incident mentioned in the F.I.R. lodged by Ganesh Patrole is more relevant and it is at 7.30 p.m. and according to him if this timing is considered, admittedly the Applicant was not in the building as per CCTV cameras.

14. It is true that the deceased has succumbed to the injuries and now the offence is converted into Section 302 of the Indian Penal Code earlier it was under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504, 506 of the Indian Penal Code and Sections 37(1), 135 of the Maharashtra Police Act. I am not impressed with the arguments advanced on the basis of timing shown in the cameras installed in the building in which the Applicant is having the office, I

think this scrutiny can be done at the time of trial.

15. However, I am accepting the other contentions raised on behalf of the Applicant. Even though it may be true that the first informant and other seven witnesses have taken the name of the Applicant in the F.I.R. and in the statements, they have not alleged any role against the present Applicant. They have specifically referred to some of the accused, who have played particular part. Against this Applicant, there is no role assigned. What is the role is presence and the omnibus allegations of beating with fists and blows by all the accused to the deceased and one Bharati.

16. As said above when there is a counter F.I.R., the Court needs to be looked into the materials not in usual manner like when there is single F.I.R.. The counter F.I.R. is there in which there is serious injury caused to one Rajesh Sutar. So why for custodial interrogation is required? So convincing ground is made out. Just because there are serious allegations are there is no ground to reject anticipatory bail.

17. Considering this I intend to grant anticipatory bail to this Applicant. Hence the Order:-

ORDER

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 58 of 2023 registered with Vasind Police Station for the offence punishable under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504, 506 of the Indian Penal Code and Sections 37 (1), 135 of Maharashtra Police Act of the Indian Penal Code, the Applicant be released on furnishing Personal Bond and Surety Bond in sum of Rs. 50,000/-.
- (iii) Applicant is directed not to enter the Shahapur Taluka till filing of the charge-sheet.
- (iv) Applicant is directed to furnish his alternate address of residence to the Police as well as to the Court.
- (v) Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (vi) Applicant to cooperate the police as and when called, It also includes secure presence of the applicant in the police station. For the said limited purpose the applicant is permitted to enter the area for limited duration to be specified by the police.

18. It is made clear that the observations made herein are prima facie observations and the trial Court shall decide the case on its own merits without being influenced by the observations made in

this order.

19. Application is disposed of in the aforesaid terms.

20. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]