

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3352 OF 2023

Owesh Jakir Kokani ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Aniket Vagal a/w. Mr. Kunal Pednekar, for the Applicant
Mr. S.H. Yadav, APP, for the Respondent/State.
Mr. Nikhil Bonde, API, Indira Nagar police station.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 5, 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. 131 of 2021 registered at Indira Nagar police station, Nashik for the offences punishable under sections 302 and 201 read with 34 of Indian penal Code, 1860.
3. Jakir Kokani, the applicant's father and co-accused is the owner of Bharat Dairy. The deceased was one of the workers in the said dairy. The workers usually started work at 1.30 a.m. On 7th July, 2021 at about 1.30 am the applicant along with co-accused Jakir Kokani and another co-accused Ramnarayan Singh came to the place where the workers used to stay to wake them up for the work. The deceased allegedly refused to wake up stating that he

would start the work at 5.00 am. The prosecution alleged, the applicant and the co-accused abused and assaulted the deceased. The co-accused Jakir Kokani had repeatedly kicked the deceased in the chest and stomach. Co-accused Jakir Kokani had also pressed his foot on the neck of the deceased. The prosecution alleges that the deceased died and the dead body of the deceased was found in the well of Hiranman Salve at Wadala Gaon on 24th July, 2021.

4. Mr. Vagal, the learned counsel for the applicant submitted that the applicant had no role in the alleged murder of the deceased. As usual, the applicant had merely accompanied his father and other employees to wake up the workers for work in the dairy. Inviting the attention of the Court to the statement of the witnesses especially the statements recorded under section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate, Mr. Vagal submitted that none of the witnesses have stated that the applicant had assaulted the deceased. Therefore, at best, the applicant can be roped in for the offence punishable under section 201 of the Penal Code.

5. The learned APP resisted the prayer for pre-arrest bail. It was submitted that the applicant has made himself scarce. The learned Additional Session Judge, Nashik rejected the application on 15th May, 2023. Yet, the instant application came to be filed in the month

of November, 2023. In the backdrop of the nature of the accusation, according to learned APP, the applicant appears to be equally complicit.

6. I have perused the material on record. There is material to show that the deceased was last seen in the company of the applicant and the co-accused, by a number of workers. The co-worker of the deceased have categorically stated that the deceased was brutally assaulted as he refused to woke up for the work. The manner in which the assault was perpetrated by co-accused Jakir Kokani has also been stated. There is material to show that the applicant and the co-accused have taken away the deceased in a car. After few days, body of the deceased was found in a well. The postmortem report indicates that the cause of the death was asphyxia due to strangulation and throttling.

7. Thus, there is a strong prima facie material to show that the deceased met a homicidal death and with a view to cause disappearance of the evidence, the dead body was thrown in the well. The presence of the applicant along with co-accused at the scene of the occurrence is stated to by the co-workers of the deceased.

8. The endeavour on the part of the applicant that there is no material to show that the applicant had assaulted the deceased in the circumstances of the case, at this stage, does not advance the

cause of the applicant. The attendant circumstances and the subsequent conduct of causing disappearance of the evidence prima facie incriminate the applicant.

9. It appears the applicant has made himself scarce. Exercise of discretion in favour of the applicant at this stage, would jeopardize the interest of the prosecution. The Court can not loose sight of the fact that a poor worker was allegedly done to death for refusal to wake up on the scheduled time and resume the work. I am, therefore, inclined to hold that this is not a fit case to exercise the discretion to grant pre-arrest bail. Hence, the following order.

ORDER

1] The application stands rejected.

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

(N. J. JAMADAR, J.)