



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 765/2023

Rani Yogesh Upadhye and others V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N.R.Tekade, Counsel for the applicants.
Ms. T.H.Udeshi, APP for the State.
Mr. Digvijaysingh, Counsel for the informant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/12/2023.

1. By preferring this application, the applicants are seeking pre-arrest anticipatory bail in connection with Crime No.555/2023 registered at Police Station Khadan, Tah. and District Akola for the offences punishable under Sections 143, 147, 148, 294, 354, 442, 302, 504 and 506 of the Indian Penal Code, 1860 and Sections 4 and 25 of the Arms Act, 1959.

2. The applicants are apprehending arrest at the hands of the Police as the crime is registered on the basis of the report lodged by the Smt. Gokul Chhotelal Upadhye on allegations that present applicants, especially applicant No.1 and 2 are her relatives. For last one year, applicant No.1 was residing in some other places, and she learnt that applicant No.1 has performed the marriage. However, on some occasions, applicant No.1 visited her place and was demanding

Rs. 10 Lakhs as her share. As her husband could not paid the said amount, she was insisting to sell the house and give her money.

3. On 26/05/2023, the present applicants along with the other co-accused entered in her house, abused her husband and also assaulted them. It is alleged that applicant Nos. 1 and 2 and the other co-accused dragged him outside the house, assaulted him by fist and kick blows and also gave blows by the bricks. Due to the repeated assault, the husband of the informant has sustained the injures and succumbed to the death. On the basis of said report, the Police have registered the crime.

4. Heard learned counsel Mr. Tekade for the applicants. He submitted that as far as the role of the present applicant is concerned, there is only an allegation that they have been assaulted by fist and kick blows, and no weapon is assigned to them. The injuries sustained by the deceased are also in the nature of abrasion and contusion. At the most, the case covers under Sections 324 and 325 and not more than that. The custodial interrogation of the present applicants is not required and prays for grant of pre-arrest bail.

5. Ms. T.H. Udeshi, learned APP strongly opposed the present application on the ground that the

deceased was dragged outside the house and assaulted by the applicant Nos. 1 and 2. Due to the repeated assault by fist and kicks and blows, the deceased have sustained five injuries which resulted into the death. The allegation against the present applicant No.1 that she has also given a blow by means of bricks. Thus, there is a prima-facie material against the present applicants and prays for rejection of the application.

6. Mr. Digvijaysingh, learned counsel for the informant also reiterated the same contentions and submitted that the consideration for grant of anticipatory bail and grant of bail under Section 439 are different. Considering the allegations against the present applicant and the gravity of the offence, their custodial interrogation is required and prays for rejection of the application.

7. Having heard learned counsel for the applicant. Perused the recitals of the FIR. As far as applicant No.3 is concerned, the recitals of the FIR shows that she was present and she abused the deceased and the informant. There is no allegation against her that she was either assaulted by fist and kick blows or any other object. Considering the role of applicant No.3, her application for grant of anticipatory bail can be considered, as mere presence is shown in

the FIR. But as far as the applicant Nos. 1 and 2 are concerned, there are specific allegations against them. Applicant No.1 is the root cause of the said incident. She raised the quarrel as per the allegation and dragged the deceased along with other co-accused. It further appears from the recitals of the FIR that she has played a vital role in the commission of the Crime. There are allegations against applicant No.2 also regarding the assault. Admittedly, considerations for grant of anticipatory bail and bail under Section 439 are different. Furthermore, while considering the anticipatory bail, the considerations that gravity of the offence, the circumstances under which the alleged incident has taken place, the availability of the applicants during the trial are the main considerations.

8. Hear in the present case, in my opinion, considering the role attributed to applicant Nos. 1 and 2, there is a prima facie case and therefore, their prayers for grant of anticipatory bail deserves to be rejected. Whereas, the prayer of the applicant No.3 considering her role is limited one deserves to be considered. Accordingly, I proceed to pass following order.

- a) The criminal application is **partly allowed**.

- b) The applicant No.3 – Sindhubai Pannalal Upadhye in connection with Crime No.555/2023 registered at Police Station Khadan, Tah. and District Akola for the offences punishable under Sections 143, 147, 148, 294, 354, 442, 302, 504 and 506 of the Indian Penal Code, 1860 and Sections 4 and 25 of the Arms Act, 1959, is released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c) The prayer of the applicant Nos. 1 and 2 for grant of anticipatory bail is **rejected**.
- d) The applicant No.3 shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- e) The applicant No.3 shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

Criminal application is disposed of accordingly.

[URMILA JOSHI-PHALKE, J]