



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 20 OF 2024

1. Laxmi Devidas Mache
2. Akshay @ Prashant Devidas Mache
3. Swapnil Devidas Mache **...Applicants**

Versus

The State of Maharashtra **...Respondent**

Mr. V. D. Salunke, Advocate for the Applicants
Mr. D. B. Bhange, APP for Respondent – State.

CORAM : R.M. JOSHI, J.

DATE : JANUARY 16, 2024

ORDER

1. This is successive application for pre-arrest bail. Applicants are apprehending arrest in connection with Crime No. 736 of 2023 registered with Shrigonda Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 201, 143, 147, 148, 149, 504, 506 read with Section 34 of the Indian Penal Code.

2. Applicants had filed application bearing no. 1630 of 2023 for anticipatory bail before this Court, however, as the investigation was in progress then,

this Court shown its disinclination to grant any relief to the Applicants and hence, application came to be disposed as withdrawn. Present application is filed after filing of the charge-sheet and it is the contention of the Applicants that in entire charge-sheet there is absolutely no evidence against them showing their involvement in the crime.

3. On 15.08.2023 Amol Mache, first informant, reported incident occurred on 13.08.2023 in which his father Maruti was assaulted by the accused persons and in the said assault he died. Informant is not witness to the incident but he was intimated about the same by Sunil Darekar. Later on, he made inquiry with Tatya Supekar, who was cultivating the field of the informant and he disclosed the incident to the informant.

4. Learned Counsel for the Applicants submit that perusal of the entire charge-sheet does not show any incriminating material against present Applicants. According to him, there are three eye witnesses to the incident i.e., Tatya, Ankush and Ramkrushna. By referring to their statements recorded under Section 161 of Code of Criminal Procedure, it is submitted that

there is no whisper in these statements about present Applicants causing assault on the deceased. It is submitted that in fact Applicants took deceased to the hospital, which shows that they never had any intention to commit murder of the deceased.

5. Learned APP opposed the application by contending that the crime in question is serious in nature and having regard to the previous enmity between parties over the water and bandh, participation of the Applicants can be seen in the incident. It is his contention that admittedly Applicants were present at the spot. He drew attention of the Court to the statement of Kondiba, who claims that on that day prior to actual occurrence of incident of assault present Applicants and co-accused have threatened the deceased to kill him. Thus, according to him, this is not a fit case for granting anticipatory bail.

6. This is second bail application. Subsequent bail application can be entertained provided there is substantial change in circumstance. First bail application was not entertained for the reason that investigation into the serious crime like murder was in

progress. Now, admittedly after the order of dismissal of the previous bail application on withdrawal, charge-sheet has been filed. Now, entire material is before this Court in order to appreciate as to whether there is any evidence against present Applicants showing their complicity in the crime. Thus, here is the case wherein change in circumstance to entertain present bail application.

7. The incident in question has occurred on 13.08.2023 in the agriculture field. Tatya, Ankush and Ramkrushna were present at the spot. They have specifically stated about the occurrence of the incident in their statement recorded under Section 161 of CrPC. The allegation is against co-accused of causing assault on the deceased. Their statements further reveal that at the time of initial assault present Applicants were not even present at the spot. After their arrival at the spot, they are not said to have caused any assault on the deceased. The only allegation against Applicant No. 1 is that she threatened Tatya to inform to others this to be a case of attack (heart attack). Even if this statement is

accepted to be true, the offence under Section 302 of IPC would not be made out against this Applicant.

8. Merely because the offence is serious in nature, the anticipatory bail cannot be refused as sought to be contended by learned APP. The statement of Kondiba is recorded belatedly in the month of November, 2023. Kondiba is father of witness Tatya. It is surprising that Kondiba never disclosed to Tatya about the incident occurred in his presence when the present Applicants had threatened the deceased to kill him. At this stage, this Court finds no reason to accept the said statement as it does not gets support from the other material evidence on record.

9. Applicants have no criminal history behind them. In the present case, *prima facie* there is absolutely no evidence to connect them with the crime in question. Hence, it is a fit case to protect their liberty. In the result application stands allowed. Hence, the order:

O R D E R

- (i) In the event of arrest the Applicants in connection with Crime No. 736 of 2023 registered with Shrigonda Police Station,

Dist. Ahmednagar for the offences punishable under Sections 302, 201, 143, 147, 148, 149, 504, 506 read with Section 34 of the Indian Penal Code, they shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) each with one surety in the like amount.

- (ii) They shall not contact the witnesses directly or indirectly.
- (iii) They shall not interfere with the evidence in any manner whatsoever.

(R. M. JOSHI, J.)

Malani