



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 2128 OF 2023

PRAKASH S/O KANTHIRAM RATHOD
VERSUS
THE STATE OF MAHARASHTRA

Mr. P. P. Giri, Advocate for the applicant
Mr. D. B. Bhange, APP for the respondent/State

CORAM : R. M. JOSHI, J.

RESERVED ON : 29th JANUARY, 2024

PRONOUNCED ON : 1st FEBRUARY, 2024

PER COURT :-

1. This is successive anticipatory bail application. First Anticipatory Bail Application bearing No. 1767 of 2023 was rejected by this Court by passing order dated 23rd October, 2023.
2. Learned counsel for the applicant submits that when the previous anticipatory bail application was heard and decided investigation was in progress and now after conclusion of investigation charge-sheet has been filed, which amounts to change in circumstance. He further submits that the applicant has placed evidence in the form of conversation between him and co-accused indicating that at the relevant time the applicant was not instigating the accused to beat the deceased but in fact was preventing them from doing so.
3. First information report indicates that the brother of the informant

had intimate relationship with sister of applicant. This fact was known to the relatives. Both of them stayed away for a month. Thereafter husband and brother of a lady searched them. They were thrashed at the place they were found. Both were brought to the village. Lady was sent to her paternal home whereas Avinash i.e. deceased was assaulted. He died on 30th July, 2023.

4. Learned counsel for the applicant submits that the Investigating Officer has not carried out proper investigation of the crime and has attempted to falsely implicate applicant therein. It is submitted that having realized the same the Superintendent of Police has withdrawn investigation from him and the same is now assigned to another officer. According to him admittedly applicant was not present at the spot of the incident and hence his direct involvement in the crime is not there. It is submitted that except for the fact that there were alleged number of phone calls exchanged between applicant and co-accused, there is no evidence to show that the applicant had in fact instigated the assault. He submits that there is conversation recorded in the mobile phone of co-accused which indicates that the applicant in fact was preventing them from causing assault on the deceased. Thus, it is his submission that *prima facie* there is no evidence in order to hold that there was instigation on the part of the applicant in commission of the said crime. It is submitted that this material piece of evidence was not produced at

the time of rejection of previous bail application and hence it is a fit case to protect the liberty of the applicant by entertaining this successive bail application.

5. Learned APP opposed the said contention by referring to the seriousness of the crime. It is his submission that there is evidence on record to indicate about 25 calls being exchanged between applicant and accused at the relevant time and this is sufficient to show that he was instrumental/instigator for causing of assault on the deceased. It is claimed that no substantial change has occurred in order to entertain the present application. As far as the conversation is concerned, it is his submission that the said conversation has been sent for forensic analysis and as such the same cannot be relied upon at this stage unless authenticity thereof is duly established.

6. No doubt, previous anticipatory bail application was rejected when the investigation into the crime was in progress. Now, the charge-sheet has been filed against other accused person except for the present applicant. The said application was rejected on the ground of seriousness of crime and involvement of applicant being seen therein from number of calls exchange between him and co-accused. This was also supported by the statements of witnesses.

7. Now during the pendency of present application at the instance of the applicant a mobile phone came to be seized containing alleged

conversation between applicant and co-accused. Two audio clips were said to be found in the said mobile phone. Transcript recorded in the said mobile phone though indicates that at one place he tells not to assault. There is however no verification of the authenticity of the said recording on mobile phone which is seized at instance of applicant/accused. At this stage it is difficult to conclude that this conversation is between the applicant and co-accused, as claimed by applicant for want of ascertainment thereof. Moreover, there are about 25 calls between applicant and accused person and the transcript is in respect of alleged two calls exchanged between them. In such circumstances, it would not be possible to hold at this stage that applicant did not instigate the co-accused in causing of the said assault.

8. Record indicates that entire material except for the material sought to be brought on record by applicant is same which was available at the time of rejection of previous application and as such there is no substantial change in circumstance. This Court therefore finds no reason or justification to take different view from the one taken while rejecting previous bail application. Hence, applicant stands dismissed.

(R. M. JOSHI, J.)

ssp