

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

ANTICIPATORY BAIL APPLICATION NO. 530 OF 2024

Dhavalsinh Pratapsinh Mohite Patil	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Ashok Mundargi, Sr. Advocate a/w. Abhijeet Desai a/w. Ranjeet Jagtap a/w. Karan Gajra a/w. Smt. Daksha Punghera a/w. Vijay Singh a/w. Shubham S. Nabriya i/b. Desai Legal for Applicant.

Mr. Avinash A. Naik, APP for State/Respondent.

**CORAM :- SARANG V. KOTWAL, J.
DATE :- 26 FEBRUARY 2024**

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.39 of 2024 registered at Akulj Police Station, Solapur Rural, on 22.01.2024, under Sections 304, 324 and 323 r/w. 34 of the Indian Penal Code.
2. Heard Mr. Ashok Mundargi, learned senior counsel for the applicant and Mr. Avinash Naik, learned APP for the State.
3. The F.I.R. is lodged by the Police Inspector Deepratan

Gaikwad on 22.01.2024 at about 12.23a.m. in the midnight. The F.I.R. mentions that this case pertains to death of one Abhijit. He was being treated for his mental illness. At about 4.00a.m. on 18.01.2024, his uncle Ganpat Kengar was told by the Police Patil of the village Wagholi that, Abhijit was detained at the house of the present applicant. He was found in injured condition. The police had taken him to the Sub District Hospital, Akluj. Therefore, Ganpat/uncle of the deceased went to that hospital. Abhijit told him that the people who had detained him had assaulted him. The police came there and took him to the hospital. While he was under treatment, at about 5.50a.m. Abhijit passed away. On this basis an A.D.R. No.5 of 2024 was registered at Akluj police station. In that A.D.R., Ganpat had not made any grievance against anybody.

4. After Abhijit's death, inquest panchanama was carried out and the dead body was taken for postmortem examination. After such examination, the cause of death was mentioned as 'pulmonary thromboembolism'. The police conducted panchanama of the spot which was in front of the bungalow of the present

applicant. The blood found on the spot was collected for forensic examination. The police found CCTV camera on the spot, however, initially, the applicant did not give any satisfactory reply. But after the police insisted for CCTV footage, they were taken to the room where the equipment for CCTV footage recording was kept.

5. The first informant and the others made enquiry with the police constable who had reached the applicant's house and had taken the deceased to the hospital. Those were the Police Head Constable Pingle, Police Head Constable Kumbhar, Police Head Constable Kantoli and Police Naik Kshirsagar. Out of them, PHC Pingle stated that, at about 1.49a.m. on 18.01.2024 one Mayur Mane called him on his mobile phone and told him that he was present at the house of the applicant and they had caught a thief who had entered the house for committing theft. PHC Pingle and P.N. Kshirsagar went there. They saw that the applicant, Satish Palkar, Mayur Mane, Hira Khandagale and four unknown persons were present on the front side of the bungalow. One unknown person was caught by the four other unknown persons. The applicant told PHC Pingle that the said unknown person had come

there to commit theft. The police looked at him closely. He had suffered injuries on his chin and hand. The applicant was holding a heavy wooden instrument used for the physical exercise (*mudgal*). Satish and Mayur had wooden (cane) sticks and the watchman Hira had a fiber stick in his hand. The applicant told the police that the said unknown person had broken the glass of a window. He showed the broken window in the office. The police made enquiries with the person who was caught. He was Abhijit. He was writhing in pain. PHC Pingle and others called other staff. The police vehicle came to the bungalow. The applicant told him that there were 10 unknown persons with Abhijit and he told the police officer to trace those 10 persons. The police were handed over a mobile phone, a charger, a watch and a small razor used for shaving. Those were allegedly found with Abhijit. Those articles were handed over by Satish to police. The police decided to take Abhijit for medical treatment first. The PHC Pingle specifically asked Abhijit as to how these injuries were caused. At that time, Abhijit told him that, the applicant himself and other 4 persons assaulted him with sticks and *mudgal*. The others also assaulted

him with kicks and fist blows. The aforementioned Hira, Satish and Mayur told the police that Abhijit had come to the bungalow for committing theft, but the dogs present there obstructed him. He fell down and therefore, he had suffered injuries. The police got suspicious because there were no signs of any scratch or bite marks. The postmortem revealed cause of death and therefore the informant lodged an F.I.R. against the present applicant, Satish Palkar, Mayur Mane, Hira Khandagale, as well as, their four unknown associates.

6. Learned senior counsel for the applicant made the following submissions:

Mayur had called the police around 1.45a.m. The station diary was written on 6.59a.m. In that station diary, there was no mention of any weapon and there was no mention of any oral dying declaration. Both these aspects are introduced in the F.I.R. which is lodged after a considerable delay at about 12.23a.m. on 22.01.2024. The Postmortem notes show that, some of the injuries were more than 24 hours old and, therefore, they could

not have been caused in the incident which had taken place in the night of 18.01.2024. The postmortem notes did not show that any of the injuries which were caused within 24 hours before death, were sufficient in the ordinary course of nature to cause death. The statements of the relatives of the deceased show that, he was missing for two days. Therefore, there is a strong possibility that he could have been assaulted within those two days causing other injuries which could have resulted in his death. The deceased had no business to come to the bungalow. He had come there with 10 others and, therefore, to prevent any theft or robbery, he was caught; it did not mean that the applicant had taken any part in actual beating. The spot panchanama shows that, there was in fact breaking of a window. The deceased was held by four unknown persons. The applicant is falsely implicated because of the political rivalry in the region. The applicant had made complaints against the present investigating officer in the past and, therefore, the present investigating officer was holding grudge against him. The allegations of using of *mudgal* are not correct because there is no corresponding injury on the dead body.

7. Learned APP submitted that, at every point, the applicant and his employees had tried to mislead the police. They first came up with a theory that Abhijit was obstructed by dogs in the house and because of that he fell down and suffered injuries. The applicant and others had removed the CCTV footage. The hard disk was blank. That was done with a purpose to cause disappearance of the evidence against them. There is no force in the submission that the applicant is involved because of political rivalry. He submitted that the applicant is an influential person in the locality and, therefore, there is a likelihood of tampering with the evidence. He relied on the investigation papers in respect of the investigation carried out so far.

8. I have considered these submissions. The postmortem notes show that the postmortem was conducted between 11.00a.m. to 12.00p.m. on 18.01.2024. The deceased had suffered six injuries which were caused within 24 hours of the postmortem examination. 1) abrasion 3 x 2cm over left shoulder, 2) abrasion 5 x 2cm over left chin, 3) abrasion 10 x 4cm at right submandibular region, 4) abrasion 2 x 2cm over right chin area, 5) abrasion 3 x

3cm at right wrist inner side and 6) abrasion 2 x 2cm on left knee lateral side. Besides these injuries, there were seven other injuries in the nature of abrasion and contusion which were caused more than 24 hours before the postmortem examination was conducted. They were on the left leg, back thigh and hand. Both the lungs had collapsed. The large vessels showed 4.5 inch saddle shaped thrombus at pulmonary artery bifurcation, its tail extending into right ventricle. This had caused death and cause of death was mentioned that 'death due to pulmonary thromboembolism'. Thus, it is quite clear that, because of this beating the pulmonary artery was choked due to thromboembolism and it had resulted in pulmonary thromboembolism. The investigating agency had specifically asked for the opinion of the doctor. To that, the Doctor had opined that the injuries could be caused by hard and blunt objects. They could not have been caused by any dog bites and the probable cause i.e. pulmonary thromboembolism was possible because of beating caused to the deceased. Thus, there is direct relation between the injuries caused to the deceased and his death. Therefore, at this stage, police are right in applying Section 304 of

the I.P.C. The nature and the manner of beating shows that the assailants had knowledge that their severe beating would result into causing such injuries leading to death of Abhijit.

9. Therefore, the question remains about the participation of the assailants. To that extent, the applicant's presence at the spot is not denied. He was present along with the three named and four unknown persons. The applicant and others were attributed different wooden weapons. While it is true that the applicant is attributed a heavy wooden weapon (mudgal). In any case, the applicant was very much present when the deceased was mercilessly beaten which resulted in his death. Immediately after the police had reached the spot, they had taken the deceased to the hospital and he had died within a very short time. There was a clear attempt to mislead the police by blaming the dogs in the house and in not co-operating by providing the CCTV footage and the recording.

10. There is no substance in the submission that the theory of oral dying declaration was an afterthought, as it was not

mentioned in the station diary entry. The purpose of the station diary entry was to mention the gist of the incident and the steps taken by the police. The more important document in this case would be A.D.R. which was given by uncle of the deceased which was recorded at around 9.00a.m. in the morning. In the A.D.R., it is mentioned that the uncle of the deceased was told by the deceased about the beating. He had told his uncle that he was detained at the house of the applicant and he has clearly further stated that the persons who had caught him had beaten him. Thereafter the police had taken him for treatment. While taking treatment, he succumbed to his injuries at 5.50a.m. In spite of that, uncle of the deceased had stated that, he had no grievance against anybody. That itself shows that he was under pressure not to register an F.I.R.

11. The statements of the police officers who had reached the spot are important. It is significant that the station diary is not written by these police officers. The statements of PHC Pingle, PN. Kshirsagar, PHC Kumbhar and Kantoli are important. Their statements are recorded on 18.01.2024 itself. They have stated

that, Pingle had received a mobile phone call at 1.49a.m. on 18.01.2024 by Mayur. He had told Pingle that they had caught a thief in the house of the present applicant. He called the police to the spot. Therefore, Pingle and others went there. They described the incident which is described in the F.I.R. Pingle specifically has stated that he had asked the deceased regarding the cause of those injuries. At that time, he had told Pingle that, in the house of the applicant, the applicant himself and his associates had assaulted him with sticks, *mudgal* and kicks and fist blows. The deceased was complaining of pain in his stomach and he was asking for a cold drink. Within a very short time, at about 6.00a.m. he succumbed to his injuries. The statement of Pingle is corroborated by Police Naik Kshirsagar. Therefore, the statements of PHC Pingle and Police Naik Kshirsagar are important. They specifically referred to the oral dying declaration which in turn is corroborated by the uncle of the deceased. All these factors show that the deceased was mercilessly beaten on some suspicion. He was not found with anything which was stolen from the bungalow. There is no material to support the theory of the deceased having been

accompanied by other 10 persons.

12. Considering these over all circumstances, it is quite clear that the deceased was assaulted mercilessly in the house of the applicant; in the presence of the applicant. The deceased himself had given an oral dying declaration. Even the weapon is attributed to the present applicant. Considering the gravity of the offence and the material available against the present applicant, this is not a case where protection U/s.438 of the Cr.p.c. can be extended to the present applicant. His custodial interrogation is necessary.

13. The application is rejected.

(SARANG V. KOTWAL, J.)