

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1422 OF 2024

Vilas Pandurang Shinde	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Umesh R. Mankapure for Applicant.

Mr. Prasanna P. Malshe, APP for Respondent-State.

Mr. Laxman K. Kalel for Informant.

CORAM : MANISH PITALE, J.
DATE : JUNE 19, 2024

P.C. :

1. Heard Mr. Mankapure, learned counsel for the applicant, Mr. Malshe, learned APP for the respondent-State and Mr. Kalel, learned counsel having instructions to appear for the informant.

2. In the present case, the applicant, one of the two accused persons, is apprehending arrest in connection with FIR No.0096 dated 03.03.2024 registered at Aatpadi Police Station, District - Sangli for the offences punishable under Sections 306, 359, 362, 364, 365, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant is the mother of the deceased, who gave the statement leading to registration of the FIR. According to the informant, about 15 days prior to the registration of the FIR, the applicant along with his brother i.e. the co-accused person visited the house of the informant and forcibly took away her son i.e. the deceased, stating that he had certain accounts to settle. The deceased was alleged to be working with the accused persons for the past ten years and in that backdrop, the informant stated that she did not immediately raise any

grievance.

4. Subsequently, on 29.02.2024, a phone call was received from the co-accused person informing that the deceased had expired since he had taken certain tablets, further stating that he was having fever and was feeling cold. It was also stated that he had vomited a few times and thereafter he was taken to the hospital where he died.

5. The informant suspected that the accused persons, including the applicant, were involved in the death of the deceased and that when she tried to pursue the matter with them, they stopped taking her calls.

6. The learned counsel for the applicant submits that even if the statement, leading to registration of the FIR, is to be taken into consideration, the facts that emerge are that the deceased was allegedly taken away from his house and that eventually he expired in Uttar Pradesh. It is submitted that the co-accused i.e. the brother of the applicant runs an independent business of refining of gold in Uttar Pradesh, with which the applicant is not directly concerned as he runs a jewellery shop in District - Sangli. It is submitted that throughout the period indicated in the statement of the informant, the applicant was in his house and shop at District - Sangli, and therefore, he has a clear alibi insofar as the incident in question is concerned. It is further submitted that instead of investigating in the proper direction and despite the fact that the applicant is ready to provide all relevant material, including Closed Circuit Television (CCTV) footage of the shop as well as the lane in which a shop is located, the investigating officer is not taking cognizance of such material and the applicant is sought to be roped in with respect to the present case. It is also submitted that the applicant is ready to co-operate with the investigating officer and considering the nature of allegations made in the present case, this Court may consider the present application favourably.

7. On the other hand, learned APP submits that the applicant is specifically named in the statement of the informant and it is alleged that he along with the co-accused person forcibly took away the deceased from his house. The post-mortem conducted at the Government hospital at Miraj shows number of wounds on the body of the deceased, further indicating that at least 10 such injuries were ante-mortem for which there was no explanation. This is a factor giving rise to suspicion as to the cause of death of the deceased. It is submitted that presently, offence under Section 306 of the IPC has been registered on the basis of the information that was provided to the informant by the accused persons as to the manner in which the deceased had expired. It is submitted that the ongoing investigation may lead to further offences being registered, including an offence under Section 302 of the IPC. In any case, it is submitted that serious offences, including offence under Section 364 of the IPC are already registered in the subject FIR against both the accused persons. As regards the alibi, it was submitted that the investigating officer would certainly investigate all the angles in the present case, but it cannot be said at this stage itself that the applicant has made out a *prima facie* case in his favour.

8. The learned counsel having instructions to appear on behalf of the informant supports the contentions raised by the learned APP and he further submits that even the Sessions Court, while rejecting the anticipatory bail application of the applicant, took note of the fact that the call detail records of the mobile phone of the deceased available with the investigating officer show that from 24.02.2024 to 26.02.2024, the location of the deceased was within Maharashtra and that there was a serious doubt created as to whether the deceased at all went to Uttar Pradesh and also whether he expired at Uttar Pradesh.

9. This Court has considered the rival submissions. A perusal of the

statement of the informant, leading to registration of the FIR, indicates the involvement of the applicant from the very beginning of the chain of events. It is specifically alleged that the applicant along with his brother i.e. co-accused visited the house of the deceased and forcibly took him away. The informant, who is the mother of the deceased, has specifically stated that the deceased was employed with the accused persons for the past ten years and in that backdrop, she did not immediately raise a grievance about the fact that the accused persons had forcibly taken away the deceased.

10. The material on record also shows that the deceased expired and the post-mortem conducted at the Government hospital at Miraj specifically records 10 ante-mortem injuries. In such a situation, a strong suspicion arises in respect of the role of both the accused persons in respect of the death of the deceased. For the present, offence under Section 306 of the IPC has been registered on the basis of the information that was received by the informant as regards the manner in which the deceased expired. The post-mortem report certainly gives a different picture and therefore, the matter requires further investigation. There is substance in the contention raised by the learned APP that upon further investigation, the accused persons may face registration of the offence even under Section 302 of the IPC.

11. At this stage, the applicant cannot claim that on the basis of alibi, he has made out a *prima facie* case in his favour, the reason being that the investigating officer has to proceed further in the matter to explore all angles, including the very question as to the place of death of the deceased and the manner in which the death occurred. Even if the investigating officer is to look into the CCTV footage upon which the applicant is insisting, it would not necessarily justify the protective order in favour of the applicant. At one point, learned counsel for the applicant

suggested that this Court could keep the application pending and the applicant was not insisting on any protective order for the present. The said contention is only stated to be rejected, for the reason that the applicant has to make out a case in his favour for the Court to grant any kind of relief in such an application.

12. The learned counsel for the applicant relied upon judgement of the Supreme Court in the case of *Ram Lal Narang Vs. State (Delhi Administration)*, (1979) 2 SCC 322 and the judgement of the Gujarat High Court in the case of *Chandan Panalal Jaiswal Vs. State of Gujarat*, 2005 SCC OnLine Guj 563 to impress upon this Court as to the role of the investigating officer when plea of alibi is specifically raised by the accused. There can be no quarrel with the proposition laid down in the aforesaid judgements requiring the investigating officer to thoroughly investigate all angles, including the plea of alibi. But, in the facts of the present case, at this stage, this Court is not impressed with the submissions made on behalf of the applicant that unless the investigating officer undertakes the investigation as per the desire of the applicant, he may not be apprehended.

13. As to whether the accused person is required to be arrested or not is within the domain of the investigating officer, but this Court is not convinced that the applicant has made out a case for grant of anticipatory bail.

14. In view of the above, the application is rejected.

(MANISH PITALE, J.)