

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

ANTICIPATORY BAIL APPLICATION NO.3480 OF 2023

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Vishal Shantaram Nikale

...Applicant

versus

The State of Maharashtra

.... Respondent

Mr. Aniket Nikam i/b Amit Icham for the Applicant.

Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th JANUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No.188 of 2023, registered at Ghoti Police Station, Nashik on 14th May 2023, under Section 302 read with 34 of IPC.
2. The FIR is lodged by one Ganesh Jagtap on 14th May 2023. The present Applicant is brother of one Sandeep Nikale, who is the main accused in this case. The incident occurred out of relationship which Sandeep Nikale had with two sisters of the

first informant Ganesh. Sandeep Nikale was married to the informant's elder sister in 2010. Thereafter, he developed intimate relationship with the informant's youngest sister. The FIR mentions that both the sisters were kept at different places and Sandeep Nikale was having relationship with both of them. There was another sister named Nayana Shinde, she was married to one Aniket Shinde. This Aniket Shinde is the deceased in this case. Aniket Shinde used to tell Sandeep that his act and behaviour were immoral and that he should not continue with it. The main accused Sandeep Nikale did not like the deceased Aniket's interference in his life. Therefore, they were on bad terms. Sandeep used to threaten Aniket. This was known to the all the family members of the first informant.

3. On 12th May 2023, there was a wedding function in their relative's family. The informant's family members had come to Ghoti to attend that wedding ceremony. Between the night of 13th May 2023, and 14th May 2023, at about 1.30.A.M., Aniket received a phone call. He went out hurriedly on his motorcycle towards Sinnar highway. The informant got suspicious and,

therefore along with Ram Raju More, followed him. When they reached the highway, they saw that a quarrel was going on at the side of the road between Ghoti and Sinnar highway. There were four persons present. All of them were named by the first informant as 1) Sandeep Shantaram Nikale, 2) the present Applicant, Vishal Shantaram Nikale, 3) Sagar Sonawane and 4) Amol Pawar.

4. Sandeep, the Applicant, and Sagar Sonawane were having iron rods and Amol had a wooden stick. All of them were assaulting Aniket forcefully. Aniket fell unconscious on the road. The informant and others went towards him. The assailants went away in a Scorpio car towards Sinnar. The informant and others took Aniket Shinde to a hospital in Ghoti, but he was declared dead after some time. On this basis the FIR is lodged.
5. Charge-sheet produced today in the Court is taken on record and marked "X" for identification.
6. Learned counsel for the Applicant submitted that the main accused Sandeep was arrested and, therefore, the charge-

sheet is already filed after completion of investigation. He submitted that the Applicant was not present at the spot of incident at the time of incident. He was around the area of Murbad and Shirvali. He submitted that the Applicant has a strong alibi to prove his innocence and, therefore, his arrest in this case on these false allegations would be unjustified. He submitted that around that time, he was with his friends. He relied on the photograph annexed at Exhibit-D to this application. This photograph show the date as 14th May 2023, and the time as 2.26 A.M.. The Applicant is seen with three of his friends and the location is shown as Shirvali. Learned counsel for the Applicant submitted that the said place is at quite some distance and normally it takes more than two hours to reach that place from the spot of incident. He submitted that the Applicant had gone to different places from evening of 13th May 2023, up to 3.00 A.M. in the night of 14th May 2023 and his whereabouts can be confirmed by recording the statements of the people in those areas. He submitted that the Applicant is falsely implicated because the the informant's family had a

grudge against Sandeep and his relatives. The present Applicant is Sandeep's brother and he is roped in unnecessarily. Learned counsel submitted that the Investigation Agency has included CDR of the Applicant's phone which shows that during the relevant period, the location of his mobile phone was elsewhere. This is an added circumstance in his favour.

7. Learned APP on the other hand, submitted that there is one more eye witness besides the first informant namely, Ram Raju More. They had seen the incident. Ganesh's and Ram's statements are recorded under Section 164 of Cr.Pc. Learned APP submitted that these witnesses have not only named the Applicant, but have also attributed weapon and roles to him. She submitted that the Applicant had submitted an Application to the Police Superintendent Officer mentioning two telephone numbers. On verification of these two telephone numbers, it was found that at the relevant time, both these telephones were switched off. She submitted that the Investigating Agency has investigated impartially and has recorded statements of Avinash, Sujyot, and Amol on 20th December 2023. These witnesses have

stated that the Applicant was with them during the relevant period. She submitted that these witnesses did not come forward any time before their statements were recorded on 20th December 2023. Out of them, Avinash was working as junior employee in the company where the Applicant was the senior employee. The other two were the friends of Avinash. She submitted that at this stage, the statements recorded under Section 164 of Cr.Pc. and the immediate disclosure of the eye witnesses at the earliest, carry more weight. She submitted that the offence is serious and if the Applicant has alibi, it can be proved during the trial. At this stage, the circumstance are not strong enough to indicate that the Applicants alibi could be true.

8. I have considered these submissions. At this stage, there is strong material against the present Applicant. There are two eye witnesses including the first informant as mentioned earlier. The statements of the eye witnesses are recorded under Section 164 of Cr.Pc. which binds them. The statements are recorded under Oath.

9. At this stage, it is difficult to observe that the

circumstances brought out by the Applicant regarding his alibi are strong enough. The photograph relied on by the applicant can be manipulated as submitted by the learned APP. She submitted that at no point of time, the Applicant had produced any CCTV footage showing the Applicant's presence at a far away place. Even the witness Avinash and two others had not come forward in support of the Applicant, till their statements were recorded in December 2023. The Applicant's two mobile phones were significantly switched off during the relevant time. Merely because one more mobile phone was showing some different locations would not mean at this stage that the Applicant himself was using that particular phone at some different place. Therefore, at the stage of anticipatory bail application in a serious case involving offence of 302 of IPC, the evidence of the eye witnesses carries far more weight at this stage. It is not possible to hold, at this stage, in the Applicant's favour that those eye witnesses are not telling the truth. The offence is serious. Apart from gravity of the offence, the custodial interrogation of the Applicant is also necessary. In this

view of the matter it is not possible to protect the Applicant under Section 438 of Cr.Pc.

10. The Anticipatory Bail Application is accordingly dismissed.

(SARANG V. KOTWAL, J.)