

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

ANTICIPATORY BAIL APPLICATION NO.926 OF 2024

Santosh Sukhdev Elinje Applicant

versus

State of Maharashtra Respondent

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- Mr. Mahendra N. Sandhyanshiv, Advocate for Applicant.
- Mr. Vinit A. Kulkarni, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th AUGUST, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.14/2024, dated 16/01/2024, registered with Chandwad Police Station, Nashik Rural, under sections 302, 324, 323, 506, 504, 143, 147, 148, 149 of the Indian Penal Code and under section 135 of the Maharashtra Police Act.

2. Heard Mr. Mahendra N. Sandhyanshiv, learned counsel for the Applicant and Mr. Vinit A. Kulkarni, learned APP for the State.

3. The FIR is lodged by one Sheetal Shinde. She has stated that on 16/01/2024, her husband Raju had gone out to his office. At about 01.30 p.m. he called the informant and told her that Chanchal Kshirsagar and his family members were abusing him. The informant and one Sunita went to that spot. They saw that Chanchal and the other accused were abusing the informant's husband. The others present there intervened and separated the accused and informant's husband Raju. At about 02.30 p.m., when the informant was present with her husband Raju and other family members; Chanchal, Vinod and others came there with iron rods. One Piyush Sutar stabbed Raju on the left side of his chest and other parts. One Raj Kshirsagar gave a blow with knife on Raju's head. One Prashant Thorat was assaulted by Piyush. After that, the accused went away. Raju was taken to Suvidha Hospital, Chandwad. But he was declared dead. On these allegations, the FIR was lodged against 10 named accused.

4. Learned counsel for the Applicant submitted that the Applicant's name is not mentioned in the FIR. Admittedly, the

Applicant was not present at the time of both parts of the incident which had taken place in the morning and in the afternoon. He submitted that there is no direct or indirect evidence against the present Applicant. He is sought to be arrested only on suspicion. According to the learned counsel for the Applicant, when the incident was going on and when the Applicant came to know about the incident, he himself called the police telephonically and informed about the quarrel. He submitted that in this background, the Applicant is sought to be arrested on vague suspicion and therefore, he needs to be protected u/s 438 of Cr.P.C.

5. Learned APP opposed these submissions. According to him, there were following circumstances against the Applicant :

- (1) Motive : There was prior enmity between the informant's family and the present Applicant. The informant in this case, had herself lodged an FIR against the Applicant and others at Chandwad Police Station vide C.R.No.360 of 2022 on 03/10/2022 u/s 354, 324 and 327 of the IPC. In that FIR, there was reference to the land dispute between the parties.

- (2) The informant Sheetal had given supplementary statement on 20/01/2024, in which she had described as to how Santosh was also involved in the offence. In that supplementary statement, she has stated that Chanchal and the present Applicant had used one Chetan and had posted a defamatory video against the deceased Raju in 2024. When Raju had questioned about it, Chetan had told Raju, that the present Applicant and Chanchal had told him to post that video and had given some documents for that purpose. When Raju told Chetan about the correct facts, he accepted that he would not post any such video in future. After this, the Applicant had posted two messages on a social networking site. In one of the messages, he had mentioned that it was the first festival of the year and even the enemies could enjoy it. Second message was that he himself was planning to come on that site and he did not know whether somebody would get scared or not.

According to learned APP all these messages clearly indicate that the Applicant had issued veiled threats to the deceased.

- (3) The most incriminating piece of evidence relied by the learned APP is about the CDR which shows that the Applicant and the main accused Chanchal were constantly in touch with each other on 16/01/2024 from 01.30 p.m. onwards till about 05.00 p.m. This was the exact time when the incident of fatal assault on the deceased had taken place.

Therefore, according to learned APP this was a strong circumstance against the Applicant showing his involvement, instigation and planning to commit the murder of the deceased. Considering the gravity of the offence, the Applicant's custodial interrogation is necessary.

6. I have considered these submissions. As pointed out by the learned APP, there are some circumstances against the present Applicant. The investigating agency is not relying on the vague suspicion entertained by them or by the witnesses while taking steps in the investigation. There is definite evidence against the present Applicant. As rightly submitted, there was

previous enmity, which is mentioned in the FIR referred to hereinabove. The supplementary statement of the informant Sheetal in this case also elaborates further details as to how the Applicant and Chanchal had instigated one Chetan to post videos against the deceased Raju. The main incriminating circumstance is about the constant interaction through mobile phone between the Applicant and the main accused Chanchal at the exact relevant time when the assault on the deceased had taken place. All these circumstances are very strong. There is definite material against the Applicant. The contention of the investigating agency is not based merely on vague suspicion. Considering all these aspects and also considering the gravity of the offence, the Applicant's custodial interrogation is absolutely necessary. No case for protection u/s 438 is made out. The application is rejected.

(SARANG V. KOTWAL, J.)