

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1862 OF 2024

Tushar Maruti Hande ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Krupali H. Rajani a/w. Ms. Shivani Jadhav and Ms. Aafreen Shaikh for Applicant.

Ms. Megha S. Bajoria, APP for Respondent-State.

Mr. Arjun Pawar, API, Wakad Police Station.

CORAM : MANISH PITALE, J.
DATE : JULY 29, 2024

P.C. :

1. Heard Ms. Rajani, learned counsel for the applicant and Ms. Bajoria, learned APP for the respondent-State.

2. The applicant herein is apprehending arrest in connection with FIR No.0084 of 2024 dated 27.01.2024 registered with Wakad Police Station, District - Pimpri Chinchwad, for offences under Sections 143, 145, 148, 149, 201, 302 and 364 of the Indian Penal Code, 1860 (IPC).

3. The learned counsel for the applicant, at the outset, points out that co-accused person, who is a wife of the applicant, was granted anticipatory bail by this Court by order dated 24.06.2024 passed in Anticipatory Bail Application No.1630 of 2024.

4. It is submitted that this Court took into consideration the material on record and found that the co-accused person had made out a *prima facie* case in her favour and if the material on record with the charge-sheet is to be taken into consideration, equally, there is no material against the applicant, and therefore, this Court may consider granting anticipatory bail to the applicant.

5. In the present case, the FIR was initially registered against the named accused person, who is the brother-in-law of the applicant and 4 to 5 are unknown persons. As per the statement of the informant, on the date of the incident i.e. 26.01.2024, her husband had left the house mentioning about certain work to be undertaken. The husband of the informant was a painter-cum-contractor for civil works. In the statement leading to the registration of the FIR, the informant stated that she subsequently received call from the mobile number of her husband, where he stated that amounts were to be urgently arranged as there were certain persons demanding money from him. On this basis, she started taking steps for arranging the amount of Rs.50,000/-. At this point, one Santoshkumar Bharti, another contractor and a friend of the informant's husband told her that certain persons had arrived in two cars when Santoshkumar Bharti was with the husband of the informant and that they had demanded certain amount from the husband of the informant, abusing him in the process and that he had noted the number of one of the cars. He also indicated to her that the amount will have to be arranged. The informant further stated that thereafter, at around 2:00 p.m. to 3:00 p.m. in the afternoon, she received a call informing her that her husband was admitted in the hospital. When she went there, she was told that her husband was brought dead. On the basis of the said statement, the FIR came to be registered.

6. The learned counsel for the applicant submits that in the present case, there is no material to link the applicant with the incident in question. It is submitted that the assailants were eventually identified and they have been arrested. Their regular bail applications are pending. It is submitted that merely because the applicant is the husband of the co-accused person, the said fact ought not to be held against him. In any case, his wife i.e. the co-accused person has already been granted anticipatory bail by this Court. It is further submitted that the only link

sought to be established by the investigating officer is based on call detail records (CDRs), which at the most show that there were certain calls made by the applicant to the deceased in the morning at around time when the incident is alleged to have taken place. It is submitted that merely because such calls were made, they cannot be a basis to link the applicant with the incident in question. The statement of the witness Santosh recorded under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.), when compared with the statement recorded under Section 164 thereof, was found by this Court, in the said order itself, to be at variance with each other. On that basis, benefit was given to the co-accused person i.e. a wife of the applicant and therefore, it is submitted that the present application deserves to be granted.

7. On the other hand, the learned APP has placed much emphasis on the description of the incident in the statement of witness Santosh recorded under Section 161 of the Cr.P.C. After referring to the same, it is brought to the notice of this Court that the CDRs of both, the deceased as well as the applicant, show that the applicant made repeated calls to the deceased from 9:00 a.m. onwards on the date of the incident, corroborating the statement of the said witness to the effect that the deceased was receiving calls from the applicant in respect of certain civil work in a property concerning the applicant and his wife i.e. the co-accused person. On this basis, it is submitted that there is material on record to link the applicant with the incident in question and this Court may not show any indulgence.

8. This Court has considered the rival submissions. Firstly, on the aspect of parity sought to be argued on behalf of the applicant, this Court is of the opinion that the submission pertaining to parity cannot be accepted, for the reason that this Court granted anticipatory bail to the wife of the applicant, who is a co-accused, primarily on the ground that the description of her role by the said witness Santosh in his statement

under Section 161 of the Cr.P.C. and his statement recorded under Section 164 thereof, showed discrepancy. While in the first statement, he had indicated that the co-accused i.e. the wife of the applicant was present at the spot of the incident and involved in the incident in question, in the statement recorded under Section 164 of the Cr.P.C., it was claimed that the very same person i.e. the wife of the applicant had questioned the assailants and thereafter, she had left the place of the incident. The said aspect of the matter cannot inure to the benefit of the applicant.

9. This Court has perused the material on record. Considering the statement of witness Santosh with regard to the chronology of events on the date of the incident and the CDRs showing that the applicant was repeatedly calling the deceased on his mobile phone, does indicate *prima facie* involvement of the applicant in the incident in question. The said witness did state that the deceased was being called as per the said phone calls to the place of the incident where the assault took place. At this stage, this Court is unable to appreciate the contentions raised on behalf of the applicant that the Google map would show that the place of the incident is about 3 kms from the place of residence of the applicant, and therefore, the location of the mobile tower and the CDRs cannot be said to be raising any suspicion against the applicant. This Court is of the opinion that the said material could be the basis of defence of the applicant, and at this stage, the same cannot be considered on the question as to whether anticipatory bail is to be granted to the applicant or not.

10. On overall consideration of the material on record, this Court is of the opinion that no case is made out for granting anticipatory bail. The application is rejected.

(MANISH PITALE, J.)