



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1387 OF 2024 WITH
CRIMINAL APPLICATION NO. 4773 OF 2024
IN ABA/1387/2024

Danish Khan S/o Aslam KhanApplicant

VERSUS

The State of Maharashtra & anotherRespondents

Mr. N. S. Ghanekar, Advocate for Applicant.
Mr. R. S. Wani, APP for the State.
Mr. R. G. Hange, Advocate for the Informant.

CORAM : ADVAIT M. SETHNA, J.
DATE : 2 JULY, 2025.

P. C. :

CRIMINAL APPLICATION NO. 4773 OF 2024

1. This Application is filed for assisting the learned APP.
Perused the Application.

2. The Application is allowed, Disposed Of accordingly.

ANTICIPATORY BAIL APPLICATION NO. 1387 OF 2024

3. The Applicant has filed this Application apprehending his arrest. The proceedings relate to Crime No. 0033/2024. The First Information Report (for short '**FIR**') is lodged on 10 May 2024 at 23.24 hours by the Barad Police Station, Tq Mukhed, Dist.Nanded. The alleged offences are under Sections 302, 504 read with section 34 of the Indian Penal Code (for short '**IPC**'). The information in

regard to the alleged incident was received on 27 April 2024 at around 12.00 hours. The Informant is one Siddheshwar Dnyanoba Bachate, aged 36 years, who happens to be the brother of the deceased.

CASE IN THE FIR :

4. From the perusal of the FIR it reveals that the Complainant lodged the complaint alleging that on 27 April 2024 at about 11.30 hours and thereafter at about 12.00 hours the deceased one Gitaram @ Sham Bachate gave directions to the Accused No. 1 to proceed with the digging work of the canal at the site. Being annoyed, the Accused No. 1 assaulted with JCB machine on the stomach, waist and private parts of the deceased with an intention to kill the deceased. The deceased sustained grievous injuries. Therefore, he was taken to the hospital. Further Accused No. 1 assaulted deceased Gitaram at the behest of Accused No.2 on 7 April 2024. Gitaram died in the hospital i.e. Orion Citicare Super Speciality Hospital, Aurangabad. It is in such circumstances, that the complaint was registered and the FIR came to be lodged.

SUBMISSIONS :

5. Mr. Ghanekar, the learned Advocate for the Applicant would submit that a bare perusal of the FIR would reveal that no role is attributed to the present Applicant in the alleged incident and/or in relation to the death of the deceased. The Applicant is stated to be the contractor, undertaking the work at the above site. The entire role is attributable to the driver i.e. Accused No. 1 i.e. Jalaluddin Salaluddin Mohammad, who inflicted injuries on the deceased. Infact, the FIR would also reveal that the present Applicant was not

even present at the time of the alleged incident i.e. on 27 April 2024. He would then submit that the charge-sheet has been filed. He would rely on the statement of the deceased recorded on 30 April 2024 to submit that the entire statement in no manner even reveals the name of the present Applicant, much less any role of the said Applicant. According to the learned Advocate for the Applicant, there is also delay in filing the FIR which is unexplained. He would submit that in the given facts and circumstances, as it would appear from the FIR, which is culminated into filing of the charge-sheet, the alleged offences under Section 302 and/or 504 read with Section 34 of the IPC are in no manner applicable to the present Applicant. He would thus submit that in the absence of any role of the present Applicant in the given facts and circumstances, there cannot be any need for custodial interrogation at this stage when the charge-sheet is also filed. He thus submits that the Anticipatory Bail Application be allowed.

6. The learned APP for the State would vehemently oppose the Application. He would submit that the investigation would reveal that there are several statements which point a finger of suspicion against this Applicant. There appears to have been some enmity between the Applicant and the deceased. Accordingly, some instructions were given by the Applicant to the Accused No. 1 to ensure that the deceased should die or suffer dire consequences. It is under such instructions from this Applicant to Accused No. 1, that the latter with the aid of JCB machine caused grievous injury leading to the death of the deceased. In such circumstances, he would submit that this is a case which would warrant custodial

interrogation considering the seriousness of the accusations and gravity of the offence.

FINDINGS :

7. Heard the learned Advocates for the parties and with their assistance perused the record.

8. Having perused the FIR, it becomes crystal clear that there is no role attributed to this Applicant in so far as grievous injuries caused to the deceased on 27 April 2024 are concerned. It is in fact attributable to the driver of the JCB Machine i.e. Accused No.1 which allegedly caused injury to the deceased who then succumbed and passed away. It is undisputed that this Applicant was not even present at the time and place of the alleged incident. This fact is sufficiently corroborated by the statement of the deceased which was recorded on 30 April 2024. pertinent it is to note that the deceased has nowhere named this particular Applicant in any manner whatsoever insofar as describing the incident dated 27 April 2024 is concerned. It is a fact on record that the charge-sheet has been filed on 19 August 2024. In view thereof, the investigation is culminated. There is no supplementary charge-sheet filed.

9. Here, at this juncture, Mr. Hange, the learned Advocate for the Informant would place on record a judgment of the Supreme Court in the case of **Satish Kumar Ravi vs. The State of Jharkhand**, in Special Leave to Appeal (Crl.) No. 9859/2023 to submit that during the pendency of the interim orders a charge-sheet cannot be filed. However, a perusal of the judgment would indicate that in those facts and circumstances, the charge-sheet was filed

despite categorical orders of the Supreme Court that no coercive steps be taken. Citing of such judgment does not help the learned Advocate for the Informant. He would also submit that the Applicant is a powerful, rich and politically influenced person who has used his influence on the police machinery. At this stage, I am not inclined to accept such submissions made across the bar, which are made without any material much less substantiation thereof.

10. In such factual matrix, there is no role attributed to this Applicant in the FIR, much less, he was not present at the date and time of the alleged incident i.e. on 27 April 2024, there is no occasion to invoke Section 302 of the IPC qua this Applicant. The basic ingredient of the section 300 is 'intention to cause death', which is not forthcoming as far as this Applicant is concerned, at this stage. Further, Section 504 of the IPC entails offence which is non-cognizable, bailable and triable by the Magistrate. In such circumstances, as noted above, the ingredients of Section 34 which are premised on common intention also may not be attracted qua this Applicant who was undisputedly not present at the date and time of the alleged incident. Prima facie, there is no material to infer such common intention qua the present Applicant, at this stage.

11. It may also be relevant to note that this Applicant has been protected by order dated 14 August 2024 passed by this Court. Pursuant to this order, the Applicant has attended the Police Station and has appeared before the Investigating Officer. Thus, the Applicant has joined the investigation. The learned APP would not oppose such factual position. The prosecution does not contend that

there is any breach of the interim order dated 14 August 2024 by this Applicant.

12. In the above facts and circumstances, though investigation is the right of the prosecution, custodial interrogation cannot be a norm. For the reasons above, a *prima facie* case is made out by the Applicant. In the given factual complexion custodial interrogation of this Applicant is not warranted. As also observed by the Supreme Court¹, it is trite that in a proceeding for anticipatory bail the Court is concerned with the detention of the Applicant at the investigation stage as the Court is not testing the legality of such case instituted against the Applicant, at such *prima facie* stage. The order dated 14 August 2024 is accordingly confirmed. In my view, the Application deserves to be allowed by passing the following order which, in my opinion, would meet the ends of justice.

ORDER

(i) In the event of arrest of the applicant Danish Khan S/o Aslam Khan in connection with C.R. No. 0033/2024, registered with Barad Police Station, Tq Mukhed, Dist. Nanded, for the offences punishable under Sections 302, 504 read with section 34 of the IPC, the applicant is directed to be released on bail on furnishing PR bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand Only) with one solvent surety in the like amount.

(ii) The applicant shall attend the concerned Police Station as and when required or directed by the Investigating Officer. He is further directed to co-operate the investigation.

1 Bijender vs. State of Haryana, SLP (Cri.) No. 1079/2024

(iii) The applicant shall furnish details of residential address and other contact details such as the mobile number etc. to the concerned police station. If there is any change in the contact details, the same shall be immediately informed to the concerned police station.

(iv) The applicant shall not leave the jurisdiction of the Court without prior permission of the Court, until further orders.

(v) He shall not contact and/or influence the witness/es and/or tamper with the evidence in any manner whatsoever.

13. The Anticipatory Bail Application is allowed in above terms.

14. Needless to mentioned that the observations are *prima facie* and restricted to the adjudication of this Application.

(ADVAIT M. SETHNA)
Judge

dyb