

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2144 OF 2022**

Santosh s/o Ananada Mane @ Chhotu .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Rajiv Chavan, Senior Advocate i/b Ms.Priyanka Chavan for the Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 06th SEPTEMBER, 2022

PRONOUNCED ON : 26th SEPTEMBER, 2022

P.C:-

1. The applicant before me, seeks protection from arrest in a C.R. which is registered on 20/05/2019 and the release of the applicant is sought on the ground that on completion of investigation, charge-sheet has been filed against the co-accused and a limited role attributed to the applicant is of conspiracy, which does not surface on record, through the said charge-sheet.

2. I have heard learned senior counsel Mr.Rajiv Chavan for the applicant and learned A.P.P. Ms.Malhotra for the State.

Before I proceed with the application and it's merit, it is necessary to refer to the case of the prosecution in brief.

3. One Manojkumar Dubey lodged a complaint with Ghatkopar Police Station on 20/05/2019 alleging that he received a phone call at 11.30 a.m. from his mother, informing that his brother-Sanjay @ Babloo, was assaulted by someone near Radha Krishna Mandir and upon receipt of the said information, he immediately rushed to the spot. He inquired from the persons present on and around, where the incident took place, and reported to the police station that in April 2017, an assault was mounted on him, mistaking him as Babloo, by the present applicant Santosh Mane and four of his other associates and he had sustained injuries, on being assaulted by hockey stick and sword. It is also narrated by the complainant that his brother had expressed to him that there was prevailing enmity between him and the said persons, including the present applicant and they could any time eliminate him, but he had ignored the said warning.

4. The injured was taken to the hospital and succumbed to the injuries. On 01/07/2019 i.e. more than a month, the complainant recorded his supplementary statement and reiterated the background of the cross FIR in form of C.R.Nos.214 and 215 of 2017, registered with Pant Nagar Police Station and stated that in C.R.No.214 of 2017, at the instance of one Suresh Mufnar, an F.I.R. was registered under Section 307 against the applicant and his other friends and even his brother was arraigned as an accused and he himself was a witness. In C.R.No.215 of 2017, charge-sheet was filed against his brother, but in C.R.No.214 of 2017, charge-sheet was filed against the applicant under Section 169 of Cr.P.C. and he was

not tried. As per his version, he sought necessary information under the Right to Information Act and he and his brother were persuading the said applications and this had irked the present applicant and he allege that by hatching a conspiracy, they had eliminated his brother.

He produced before the police the photographs of the accused persons clicked together. He also referred to a letter received by them on 24/11/2018 and it was expressed that they feared threat to their life from the applicant and his associates, which had resulted in an N.C. being registered against the present applicant.

5. It is in the background of these allegations, the investigating machinery was set into motion, since the complainant expressed apprehension that the present applicant had conspired to cause death of his brother and in furtherance of the conspiracy, he was assaulted on 20/05/2019.

6. Learned senior counsel Mr.Chavan would submit that on completion of investigation, first charge-sheet was filed on 06/08/2019 and the applicant was shown to be absconding. According to the learned senior counsel, when the charge-sheet is perused, it has specifically named three accused persons as the assailants and it is alleged that they in conspiracy with the wanted accused Imran Shaikh and the present applicant, had conspired to kill deceased. The charge-sheet was thus filed against three arrested accused and

provision was made for filing supplementary charge-sheet, when the absconding accused are arrested.

7. The material compiled in the charge-sheet, include the photographs of the injured, inquest panchnama, post-mortem report, spot panchnama etc. The statements of several witnesses are also compiled in the charge-sheet and the case of the prosecution clearly surfaces through the said statements.

The person, who had actually witnessed the incident, states that on the date of incident, at around 11.30 a.m., deceased arrived at Lucky Service Centre and they noticed one rickshaw halted on the spot, where the deceased was sitting with one other person. Three persons are alleged to have stepped out of the said rickshaw. Two of them were having knives in their hands and one was having revolver. The description of the person with revolver is specifically given and it is alleged that he pointed the revolver in his hand to the deceased and attempted to fire, but he was unable to shoot. A person wearing a cap, immediately assaulted him by a sharp edged weapon in his hand and the third person also started assaulting the deceased. As per the witness, the person having revolver also started hitting Babloo by it's rear end and when he fell to ground, they kept on assaulting him. He lay there in a pool of blood and all the three assailants fled away.

The version of this witness is corroborated by another witness, namely, Raj Tejbahadur Singh, who has specifically named the persons who had assaulted Babloo and they have been identified as Vijay Akhade, the person with revolver and

one Gopal Nadar and one unknown person, who assaulted the deceased by pointed weapon. The said witness identified the third unknown person in test identification parade as Sanjay Parshuram Patwa.

The statements of one Jasir Shaikh, Hemant Parekh and Ganesh Patil also corroborate the version of the prosecution case. Apart from this, there is also a CCTV footage, which has recorded the incident.

The charge-sheet also includes the statement of a shop owner from whom the co-accused have purchased two knives. The statement of the rickshaw owner, who carried the three assailants on the spot, is also recorded and compiled in the charge-sheet.

8. The statement of one Gangaram Patil, the Police Inspector, is also compiled in the charge-sheet, who had provided the details of the investigation of the earlier offences, in form of cross FIRs and as far as the involvement of the present applicant in the earlier C.R., which has been alleged to be the basis of the present C.R., since the complainant has stated that the applicant had assaulted him under a mistaken identity is concerned, he has categorically stated that the applicant had set up a plea of alibi before the High Court in his bail application and he came to be released on bail. Supporting the stand of the applicant, the Officer has further stated that it was confirmed from his friend that on 22/05/2017, Santosh Mane (applicant) was present in Akola and thus has given a clean-chit to him in the earlier incident, where it is alleged that

it is the applicant, who had assaulted the complainant, assuming that he was Babloo.

9. In the supplementary charge-sheet, which is filed, no exact role has been attributed to the applicant. It is not the case of the prosecution that he was present on the spot. The CDR compiled in the charge-sheet only establish communication between Imran and other accused persons and there is no material against the applicant, except the statement and one previous mistaken assault in respect of which, the Police Inspector has already verified his plea of alibi.

10. Since the material in the charge-sheet falls short of establishing a connect between the applicant and death of Sanjay @ Babloo, who was assaulted by the three assailants and the prosecution accused the applicant of the conspiracy, which in no way has surfaced from the charge-sheet filed against the co-accused, the applicant deserves protection from arrest. He shall report to the police station and depending upon the outcome of the investigation, it would be decided, whether his custodial interrogation is necessary or not.

Merely because the offence involved is under Section 302 of IPC, it is not imperative for his custodial interrogation and an apprehension of the applicant that, 'he has reason to believe that he may be arrested', is sufficient to invoke the provision of Section 438 of Cr.P.C. and considering the fact that the incident had taken place some three years back and the

material compiled in the charge-sheet against other accused reflects a limited role to the applicant, at this stage, he deserves protection from arrest.

Hence, the following order.

: ORDER :

- (a) In the event of arrest in connection with C.R.No.306 of 2019 registered with Ghatkopar Police Station, applicant-Santosh s/o Ananada Mane @ Chhotu shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (b) The applicant shall report to the Investigating Officer from 3rd to 6th October, 2022 between 3.00 to 5.00 p.m. and, thereafter, as and when called for.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

11. List the application on 17/10/2022.

(SMT. BHARATI DANGRE, J.)