

(1995) 11 BOM CK 0036

In the Bombay High Court

Case No : Criminal Application No. 2355 of 1995

State of Maharashtra

APPELLANT

Vs

Laxman Kishan Shirashat

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 16, 439(2), 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (1996) CriLJ 1282

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : S.J. Pingulkar, app, for the Appellant; K.V. Reddy, for the Respondent

Judgement

1. I have heard Ms. S. J. Pingulkar, A.P.P., for the Applicant the State of Maharashtra and Mr. K. V. Reddy, for the Respondent.
2. This is an application u/s 439(2) of the Cr.P.C. read with Section 482 of the Cr.P.C. for cancellation of the anticipatory bail granted to the Respondent vide order dated 20-5-1995 passed by the Additional Sessions Judge, Pandharpur.
3. The Respondent along with some others has been charge-sheeted for the offence punishable under Sections 147, 148, 149, 302, 453, 324 of the I.P.C.
4. The case of the prosecution in brief is that on 19-2-1995 at about 7.30 p.m. the injured Dattatraya Devappa Kamble was sitting in his house along with his brothers Laxman Devappa Kamble and Kailash Bhinge and some others. At that time the Respondent, armed with sword along with some others armed with sharp edged weapons came inside the house. Assault is alleged to have been launched by the Respondent and others on Kailash Bhinge, Laxman Devappa Kamble, Bhaskar Babasaheb Bhinge, Mahesh Shinde and Dattatraya Devappa Kamble. As a consequence of this assault, Kailash Bhinge died on the spot and Laxman Devappa Kamble sustained injuries to which he succumbed couple of hours later. Apart from the injured persons a large number of eye-witnesses are

alleged to have seen the incident.

5. The F.I.R. of the incident was lodged on the same day at 8.40 p.m., i.e. within about an hour and ten minutes of the incident taking place by Rajabhau Devappa Kamble. In the aforesaid F.I.R. the Respondent and others are named.

6. The post-mortem examination of the dead bodies of Kailash Bhinge and Laxman Devappa Kamble was conducted on 20-2-1995. On the person of the former as many as 13 incised wounds were found and on that of the latter 15 incised wounds were found. On the person of the three injured persons namely Bhaskar Babasaheb Bhinge, Mahesh Shinde and Dattatraya Devappa Kamble injuries were also found which were medically examined on the same day.

7. The Respondent applied for anticipatory bail before the Additional Sessions Judge, Pandharpur, who was pleased to admit him to the same. This order has been challenged by means of the present petition.

8. After perusing the order dated 20-5-1995 passed by the Additional Sessions Judge, the averments made in the petition and hearing the counsel for the parties, I am of the view that the anticipatory bail granted to the Respondent deserves to be cancelled.

9. At the stage of anticipatory bail the learned Additional Sessions Judge should have only confined himself to the question as to whether a prima facie case was made out by the prosecution. The learned Additional Sessions Judge has clearly gone beyond the considerations which should weigh with a Criminal Court while considering the question of granting anticipatory bail in, a case u/s 302 of I.P.C., especially a case like the present one in which there are injured witnesses whose statements are corroborated by the nature of the injuries received by the victims. The learned Judge has completely over-looked the fact that the use of a sword has been attributed to the Respondent and both the deceased persons sustained a large number of incised injuries. He has also ignored the fact that the 3 eye-witnesses namely Bhaskar (an injured eye-witness), Sakubai and Kalpana in their statements, recorded u/s 16 of Cr.P.C. have categorically attributed a specific role to the Respondent namely that of assaulting the deceased Kailash Bhinge with the sword.

10. To me, it appears, the learned Judge has been primarily influenced by three factors while granting anticipatory bail to the Respondent.

Firstly, he was wrongly swayed away by the dying declaration made by Dattatraya Devappa Kamble. In the dying declaration the third question put to him was "injuries on your body when and how" ? In response to this question, the injured replied as to who all had assaulted him. The learned Additional Judge misconstrued this answer as tantamount to the aforesaid injured not nominating the Respondent in the incident.

Secondly, the learned Judge was swayed by the circumstances that the Respondent was a Municipal Councillor of Pandharpur Municipality. I am afraid

that this was no reason for him to have granted bail to the Respondent.

Finally, the learned Judge was swayed by the circumstance that the incident took place on 19-2-1995 at about 7.30 p.m. and in between 5.30 p.m. on 18-2-1995 and 6.00 p.m. on 19-2-1995 the Respondent was admitted in General Hospital at Afzalpur, District Gulbarga. In the order of the learned Judge has mentioned the distance between Afzalpur and the place of incident as about 200 Kms. A medical certificate was filed by the Respondent before the learned Judge to this effect, of his admission in the hospital. At this stage for three reasons, I am not inclined to accept the plea of alibi.

Firstly, in my view the circumstance of the Respondent being discharged at 6.00 p.m. from a Government Hospital is very suspicious and fishy. Experience shows that discharge in a government hospital takes place sometime, between morning and noon because at that time, the office of the hospital is open and accounts etc have to be cleared before a patient is discharged. I find the story of the Respondent being discharged at 6.00 p.m. as not convincing.

Secondly, there can be no denying the fact that one and half hours before the incident atleast the Respondent had been discharged from the hospital.

Only after evidence being adduced in the trial Court, could the Respondent prove as to whether the Respondent was actually admitted in the hospital and as to what was the distance and how much time would it take to cover the same. The onus of proving this was certainly on him.

Thirdly and most importantly in my view, the stage of anticipatory bail is not the proper stage to consider the plea of alibi, in a double murder case in which there are injured eye-witnesses, who attribute specific part to the Respondent. At this stage, it would be unfair to give preference to this plea of alibi which yet to be proved in the trial Court and to ignore the overwhelming ocular account which was mentioned earlier, comprises of injured eye-witnesses and gives specific role to the Respondent.

11. In my view, considering the circumstances that the role attributed to the Respondent by the eye-witnesses is corroborated by medical evidence; that the F.I.R. has been lodged promptly; and that the injured witnesses name the Respondent, it was not proper for the learned Judge to have admitted the Respondent to anticipatory bail in case of double murder. In my view, it was grossly unjust and improper exercise of discretion on his part.

12. Grant of anticipatory is to be confined to exceptional cases, particularly in a double murder case and in my view this was not a appropriate case for granting it.

13. Considering the over all circumstances, I am of the view that the impugned order dated 20-5-1995 passed by the learned Additional Sessions Judge, Pandharpur granting anticipatory bail to the Respondent cannot be sustained. I quash the same. I direct that the Respondent to be taken into custody forthwith.

14. I direct the office to communicate this order to the Additional Sessions Judge, Pandharpur, who shall forthwith ensure its compliance. The learned Judge shall send his report to this Court on or before 29-11-1995 intimating the Court whether the Respondent has been taken into custody or not ?

15. The office shall place the report submitted by the Additional Sessions Judge on the Board of this Court prepared for 30-11-1995.

16. The learned Judge would not be influenced by this order in case an application for bail is made on merits and would also not take this order into account while disposing of the trial in this case.

Certified copy expedited.

17. Order accordingly.