

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 451 OF 2021

Shailesh S/o Uddhavrao Jogdand

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R.V. Gore, Advocate for the applicant.

Mr. M.M. Nerlikar, APP for respondent.

CORAM : M.G. Sewlikar, J.

DATE : 18th May, 2021.

PER COURT :

1. This is an application for anticipatory bail.

2. Facts leading to this application are that :-

Applicant is the husband of the informant who is working as a Staff Nurse in Government Medical College, Aurangabad. She is living in Government quarter at Snehnagar, Aurangabad. Applicant and the informant tied the knot in the year 2011. Informant and the applicant are not getting along well on account of marital disputes. On 13.04.2021 at 6.00 a.m., applicant came home. At 7.00 a.m., when informant was in the kitchen and applicant was in the washroom, one Priyanka Suresh Talawande, who is a Government Servant, came to her house and started

abusing the informant. Priyanka said to the informant that she (Priyanka) married the applicant and informant should leave the house. Priyanka smashed T.V. and mirror and slapped her. Applicant dragged the informant from hall to bed room. Applicant and said Priyanka slapped her. Applicant restrained the informant from going out of the house for lodging First Information Report. The First Information Report came to be lodged on 16.04.2021, on the basis of which, offence under Sections 323, 342, 427, 452, 504, 506 read with Section 34 of the Indian Penal Code came to be registered against the applicant and the said Priyanka.

3. Heard Shri Gore, learned counsel for the applicant and Shri Nerlikar, learned APP for the State.

4. Shri Gore submitted that except offence under Section 452 of the Indian Penal Code, all the other offences are bailable. He submitted that offence under Section 452 of the Indian Penal Code cannot be levelled against the applicant as the applicant was in the house at the time of the incident. He submitted that even otherwise, from the bare allegations made in the First Information Report, it cannot be said that custodial interrogation of the applicant is

necessary. He, therefore, prayed for releasing the applicant on anticipatory bail.

5. Learned APP Shri Nerlikar submitted that the applicant assaulted the informant. He submitted that notice under Section 41A of the Code of Criminal Procedure was issued to the applicant but he refused to comply with that notice. He submitted that applicant, being a Police Inspector, ought to have complied with the notice under Section 41A of the Code of Criminal Procedure. He submitted that applicant therefore cannot be released on anticipatory bail.

6. For attracting offence under Section 452 of the Indian Penal Code, the essential requirement is that of house trespass with preparation to cause hurt, to assault any one or for wrongfully restraining any person. In the case at hand, as per the bare allegations in the First Information Report, the applicant was at the house where informant is living. Therefore, prima facie, it cannot be said that offence under Section 452 of the Indian Penal Code can be attracted. In addition to that, from the bare allegations in the First Information Report, it appears that custodial interrogation of the

applicant is not necessary. In this view of the matter, I am inclined to release the applicant on anticipatory bail. Hence the following order :-

ORDER

1. Application is allowed.
2. Applicant, in the event of his arrest in connection with Crime No. 117/2021 registered with Vedant Nagar Police Station, Aurangabad, for the offences punishable under Sections 323, 342, 427, 452, 504, 506 read with Section 34 of the Indian Penal Code, be released on anticipatory bail on furnishing PR Bond of Rs. 75,000/- (Rs. Seventy Five Thousand only) with one solvent surety in the like amount, on condition that he shall remain present in the police station as and when called upon by the Investigating Officer.
3. These observations are to the extent of instant application only. The Trial Court shall not get influenced with the same during conduct of trial.

(M. G. SEWLIKAR)
JUDGE