

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.853 OF 2021**

Nazma Abdul Rehman Kazi .. Applicant

Vs.

The State Of Maharashtra .. Respondent

**WITH
INTERIM APPLICATION NO.1191 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.853 OF 2021**

Harmeet Kaur .. Applicant

IN THE MATTER BETWEEN :-

Nazma Abdul Rehman Kazi .. Applicant

Vs.

The State Of Maharashtra .. Respondent

Mr.Vinod Kashid, Advocate for applicant in ABA.
Ms. Anamika Malhotra, APP for the Respondent-State.
Ms. Harmeet Kaur, Party in person in Interim application.
Mr. Prakash Sutar (API) Khar Police Station, present.

**CORAM : PRAKASH D. NAIK, J.
DATE : 30th JUNE, 2021**

PC.

1. The Applicant is apprehending arrest in connection with C.R. No. 298 of 2020 registered with Khar Police Station for the offences punishable under Sections 452, 448, 143, 149, 323, 341, 427, 506(2) read with 34 of the Indian Penal Code (for short "IPC"). The First Information Report was lodged on 09.07.2020. subsequently Section 395 of IPC was added.

2. In the FIR dated 09.07.2020 the complainant has alleged that on 09.07.2020 at about 09:30 a.m. she heard the sound and came on the ground floor. While she went to the main door of the house, she found some persons standing at the door. They gave their names as Vishal Gupta, Arora and Adil. The said persons alongwith two ladies and 15 other persons were trying to enter into house of complainant. 15 persons were holding the articles for breaking the lock such as hammer, rope and iron rod. The complainant, her husband and son questioned them about the reason for entering into her house. At that time, Vishal told them that house belongs to him and Adil has purchased his house and garage. They also told that they had entered inside by breaking the lock installed on the gate of the bungalow. The complainant questioned them about the papers and the accused replied them that they do not have the papers. The husband and the son of the complainant stood on the main door trying to restrain aforesaid persons from entering into the house. Vishal Gupta instructed the persons to break the lock of the garage and at that time Adil and his associates broke the

lock of garage. They assaulted the complainant, her husband and son. Vishal Gupta, Adil, Sardar Arora and others entered into house. They were carrying rope, iron rod and round metal for breaking the lock. They removed the articles lying in the cupboard and took the said articles. She did not know what is taken away by them. The accused instructed the associates to bring their articles in the house as the possession of the premises is required to be taken. While the said persons trying were entering into house, the complainant made several calls to the police. For one hour the police did not come. The lock installed on the terrace of the building was broken by using hammer. Adil put up his lock to the garage. When they were told to leave the house, the accused stated that they have purchased the premises and came to take possession of the same. Adil, Arora and Vishal told them to prove that the house belong to them or else he has 50 more persons who would be called inside the house. They threatened the complainant of assault. She was scared. She needed protection. She went to the police station for lodging the complaint along with her son. She produced four

locks which were broken.

3. The applicant had preferred an application for anticipatory bail before the Sessions Court. The said application was rejected by order dated 11.09.2020.

4. Learned counsel for the applicant submitted that the FIR is false. Except offence under Section 452 IPC and Section 395 IPC which was added subsequently, all other offences are bailable. There are no independent witnesses. No role of assault is attributed to the applicant. Applicant is not named in the FIR. There is no description of stolen articles in the FIR. The complainant has improvised her version in the supplementary statement. The police had visited the place of incident. Custodial interrogation of the applicant is not necessary. The complaint is afterthought. Assuming that the applicant is present at the scene of offence, no overt act of assault is attributed to her. The statements of complainant and other witnesses are contradictory. The offence under Section 395 of IPC is not made out. The applicant has filed additional documents. The applicant is a widow having two daughters.

There is no medical evidence to substantiate the allegations of assault. The police officer had arrived at the place of incident. The applicant has relied upon the photographs showing presence of the police. The DVD of the incident shows that the complainant's husband, Vishal and Adil were talking to each other and discussing about the title of the property. Incident had occurred during the day. There are establishments near the place of incident. CCTV cameras are installed. There is no material with the police or CCTV footage to show that 10 to 15 persons had forcefully entered into house with articles and committed the offence. It is submitted that the factual aspects pointed out by learned counsel in support of the grounds for anticipatory bail for applicant were not brought to the notice of this Court, while deciding the application of co-accused.

5. Learned APP submitted that there is evidence to show the complicity of the applicant in the offence. She was present at the scene of offence. She has participated in the assault. The statements of the eye witnesses establish the presence and involvement of the applicant. She is involved in the assault. The

offence is of serious nature. Applicant is involved in taking away articles from house of complainant. Co-accused Vishal Gupta and Adil had preferred an application for anticipatory bail before this Court. The said application was rejected. The order of this Court has been confirmed by the Supreme Court. During the interrogation of the co-accused Adil Alana, the presence of the applicant is disclosed. The supplementary statement of the complainant was recorded on 17.07.2020. She has given descriptions of the stolen articles and its value. The total value is Rs.14,10,000/-. The statement of the husband of the complainant discloses the role played by the ladies who were present at the scene of offence with the main accused. The applicant has played vital role in the offence. The eye witnesses attributed role of assault to the lady involved in the offence. The applicant is a lady who was involved in the assault on the complainant.

6. The complainant has appeared in person. She has preferred application for intervention and affidavint-in-reply. She has opposed the application for anticipatory bail. She

submitted that all the required documents relating to the property have been handed over to the Investigation Officer. The property belongs to the complainant. The incident is witnessed by vendor. There are independent witnesses. The applicant has participated in the offence. 15 persons had accompanied Vishal Gupta, Adil and Arora. This is not a civil dispute. The applicant is involved in assaulting the complainant. The complainant has sustained injury. She was hit on the spine. The applicant is in possession of documents. The gold ornaments and other articles belonging to the complainant and family members were stolen. The applicant is involved in theft of articles. She is involved in the act of assault. The application for anticipatory bail preferred by the co-accused was rejected by this Court. The offence is of serious nature. She has relied upon the documents which are annexed to the intervention application. She also relied upon the medical case papers about the injuries sustained by her and others. It is submitted that the gold and other ornaments stolen by the accused are to be recovered. The accused have committed offences to grab property. The accused had made false

averments and suppressed facts. The complainant and her husband are senior citizens. Her husband is suffering from heart ailment. In the affidavit-in-reply, the complainant has stated that she is owner of property. It was always in her possession. The accused had trespassed into her property. They were armed with weapons. The applicant, while committing dacoity, was attacking her on spine and neck with iron rod. The accused committed dacoity of property worth Rs.14,10,000/-. The applicant returned to her house second time. Applicant and others broke lock of gate before going to police station. She has participated in hitting husband of complainant. Applicant abused with foul words and assaulted complainant. Applicant and others looted her jewellery. Applicant is conspirator in crime. Applicant has admitted that she is working for co-accused and shew as present. Hence application be rejected.

7. The FIR is registered on 09.07.2020. The applicant has not been named in the FIR. The case of the applicant and the co-accused Vishal Gupta and Adil Alana whose applications were

rejected by this Court can be distinguished. In the FIR, the complainant has referred to presence of two ladies alongwith the other accused. It is also alleged that Vishal Gupta, Arora, Adil Alana were accompanied by 15 other persons. In the FIR although there is reference of two ladies, no specific overt act of assault, breaking the lock is attributed to the ladies. In the FIR, it is also alleged that the accused opened the cupboard from bedroom and took away some articles. It is not specifically alleged that any lady had assaulted her or the articles were taken away by them. Supplementary statement of the complainant was recorded on 17.07.2020 i.e. after the period of about 8 days from date of alleged incident. In the said statement it is stated that on 11.07.2020 letter was sent about missing articles and submitting documents. On 12.07.2020, complainant had sent list of articles to police. In the supplementary statement she gave description of the articles taken away by the accused. She has referred to ornaments and other articles valued Rs.14,10,000/-. In the supplementary statement it is not stated that any lady had assaulted her or

committed theft of the articles from her house. The statement of the husband of the complainant was recorded on 11.07.2020. He stated that on 09.07.2020 while he was returning home, he saw 10 to 15 persons opening main gate and entering inside. One of them gave his name as Vishal Gupta and two others gave their names as Adil and Arora. The lady did not give her name. He was assaulted. The accused were carrying hammer, rope and other articles. They broke lock of garage and terrace. They entered into house and took away articles from cupboard. The lady was instructed to collect articles. Vishal Gupta told him that two rooms are rented out to ladies and garage is sold to Adil. Police came to the spot. All of them were called at police station. The accused did not come to police station. The accused again came to main gate. Adil and two persons broke lock of main gate and entered inside the gate. One of them was carrying channi, hammer and pana. They broke lock of garage. Arora came to spot. Police came to the spot. He has not given list of articles taken away from cupboard. He had improvised version of complainant. The statement of Karanjiv was

recorded on 11.07.2020. He is the son of the complainant. He stated that one of the lady was threatened him that if she is not allowed to enter in the house, she would lodge false complaint against him. He also stated that the ladies and Vishal Gupta had assaulted his mother. The lady had pulled hair of his mother. Vishal tried to press the neck of his mother. Adil Allana had pressed his neck. Accused had entered into house. The lady entered into his house and took away the articles. One lady had assaulted them. The accused did not come to police station. All these versions are in the nature of contradiction and are not reflected in the statement of complainant recorded on 09.07.2020 and her supplementary statement. Most of the allegations are also not reflected in statement of Jagmohan Singh. During the course of investigation, the statements of two other persons were recorded. One of them is tea vendor and other fruit vendor. Their statements were recorded on 10.07.2020. The tea vendor has stated that he saw two ladies and 5 to 6 persons entering the gate of Sunder View building. They heard people from inside shouting and quarrelling. The

persons were carrying hammer and channi. He is not witness to the incident which had allegedly occurred inside the gate. The statement of the other witness, a fruit vendor, is similar. Most of the version of complainant reflected in affidavit-in-reply is not appearing in her statement. Learned APP submitted that during interrogation, statement of Adil Allana was recorded in which he has stated that applicant was with him on 9.7.2020 when they had visited place of incident for taking possession of garage. The statement is exculpatory. Assuming that at this stage of investigation, it can be utilized, at the most, presence of applicant is referred. As stated above, about this overt act attributed to lady who was present, it is not reflected in FIR and supplementary statement of complainant. The case of the accused, whose application was rejected and the applicant can be distinguished.

8. Considering these aspects, the applicant need not be subjected to custodial interrogation. The case for granting anticipatory bail is made out.

ORDER

- (i) Anticipatory Bail Application No.853 of 2021 is allowed;
- (ii) In the event of arrest of the applicant in connection with in C.R. No.298 of 2020 registered with Khar Police Station, Mumbai, the applicant be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend the investigating officer on 7th 8th and 9th July 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till the filing of charge-sheet;
- (iv) Anticipatory Bail Application stands disposed of accordingly. Interim application is disposed of.

(PRAKASH D. NAIK, J.)