

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO. 1260 OF 2021**

1. Sunil Gurdasmal Dawra  
2. Kunal Sunil Dawra .. Applicants  
Vs.

The State Of Maharashtra .. Respondent

-----  
Mr. Manoj Mohite Sr. Advocate i/by Mr. shantanu R. Phanse,  
Advocate for Applicants.

Mr. Y. M. Nakhwa, A.P.P. for the State-Respondent.  
-----

Digitally signed  
by  
DNYANESHWAR  
ASHOK ETHAPE  
Date:  
2021.07.20  
15:14:21 +0530

**CORAM : PRAKASH D. NAIK, J.  
DATE : 2<sup>nd</sup> JULY, 2021**

**PC.**

1. The Applicants are apprehending arrest in connection with C.R. No.0122 of 2021 registered with Vitthalwadi Police Station for the offence punishable under Sections 354, 323, 504 read with Section 34 of the Indian Penal Code (for short "IPC"). The First Information Report (for short "FIR") was lodged on 03.05.2021.

2. The case of the complainant is that on 02.05.2021 at about 11:00 p.m. the husband of the complainant went out of their house to shoo away the stray dogs on the street as children were about to visit the house for dinner and they were scared of dogs. At that time Manohar Wadhwa, who is relative of Sunil Dawra and Kunal Dawra, who had visited their house, came out and questioned the complainant's husband as to

why he is troubling dogs. He was abused and assaulted. On hearing commotion, the complainant came out of the house. While she had intervened, Sunil Dawra, Kunal Dawra and Manohar Wadhwa assaulted her. Manohar Wadhwa pulled her Odhani and outraged her modesty. Sunil Dawra and Kunal Dawra touched her chest and pulled her dress and tore it. Sunil Dawra pressed her chest and abused her. The brother of the complainant came to the spot and approached the police Station for lodging complaint. The FIR was lodged at about 00:30 hours.

3. The applicants preferred application for anticipatory bail before the Sessions Court. The said application was rejected by order dated 10.05.2021.

4. Learned counsel for the applicants submitted that the allegations against the applicants are false. The FIR has been lodged to cause harassment. The applicant No.1 had previously filed a complaint against the brother-in-law of the informant stating that he was extorting money from the applicants. The said complaint was lodged on 28.03.2019. The applicants owned a property which was given on leave and license basis to Ms. Kishanchandani Vanita Dinesh. On the date of incident, the applicants received a phone call from their licensee that Nagdev brothers had picked up quarrels. The applicant No.1 rushed to the place of incident. He was

assaulted by Nagdev brothers and others. He rushed to Vitthalwadi Police Station and he was given memo for medical treatment by the Station House Officer. The applicant No.1 went to Central Hospital, Ulhasnagar where he was medically treated. He was referred to Kalwa Hospital for further treatment. The applicant No.1 has relied upon the copy of doctor memo of reference and photographs of the injuries sustained by him. The first informant, her husband and brothers-in-law were aware that the applicant No.1 was bound to file complaint with police against them. Hence, they went ahead and filed a false complaint. The applicant No.1 had visited the Police Station to register FIR but since he was bleeding, he was directed to go to hospital for treatment. The applicant No.2 was not even present at the place of incident. Custodial interrogation of the applicants is not necessary. The applicants have relied upon the photographs to indicate that the applicant No.1 was assaulted. Additional affidavit was filed by the applicant No.1. In the said affidavit it is stated that the allegations against the applicant No.1 are false. The alleged incident had occurred at about 11:00 p.m. on 02.05.2021. On that day at about 22:58 hours the applicant No.1 left his house and returned at 23:03 hours. In the intervening period he was assaulted by Nagdev brothers. He managed to escape with his scooter and reached his residence. Perusal of the CCTV footage of his residence supports his version. He has relied upon the photographs and CCTV footage. The applicant

No.1 went to the place where Nagdev brothers and others had assaulted him. He immediately rushed to Vitthalwadi Police Station and he was given memo of treatment. He was treated by doctor. Reliance is placed on doctor memo. The applicant No.2 is the son of applicant No.1. He is not connected with the incident in any manner. The CCTV footage of outside road of his friend's house revealed that at 23:08 hours and 23:30 hours he was outside his friend's house which is 2.5 km. away from the place of alleged incident. The CCTV footage has been annexed to the additional affidavit. The applicant No.1 had filed an application under RTI seeking CCTV footage from 02.05.2021 to 04.05.2021 of Vitthalwadi Police Station. It was informed that the CCTV footage was not available. Both the applicants are falsely implicated in this case.

5. Learned APP submitted that the first informant has attributed specific role to both the applicants. Both of them participated in the offence. Both applicants had pulled the dress of the complainant. They outraged her modesty. The defence of the applicants cannot be considered at this stage.

6. The alleged incident had occurred on 02.05.2021 at about 11:00 p.m. The FIR indicates that the co-accused Manohar Wadhwa had visited the house of applicants and Sangita Dawda. Apparently, the statement of Sangita Dawda was not recorded. The statement of husband of the

complainant was recorded under Section 164 of Cr.P.C. In which it is alleged that he was assaulted by applicants and Manohar Wadhwa. His wife is also assaulted by said persons. Manohar Wadhwa pulled Odhani of the complainant and the applicants caught top of the complainant and tore it. The alleged acts as alleged by the complainant relating to outrage of her modesty were not reflected in the said statement. It is also apparent that the memo was issued to the applicant No.1 for treatment when he approached police station. This fortified the fact that the applicant No.1 had approached the police station after he was assaulted. Memo also make reference to the history of assault. The CCTV footage relied upon by the applicant and the photographs also create doubt about the version of the complainant. Learned Sessions Judge while rejecting the application for anticipatory bail has referred to antecedents of the applicants. Considering the factual aspects in this matter, the applicants need not be subjected to custodial interrogation. Case for grant of anticipatory bail is made out.

### **ORDER**

- (i) Anticipatory bail application No.1260 of 2021 is allowed;
- (ii) In the event of arrest of the applicants in connection with in C.R. No.122 of 2021 registered with Vitthalwadi Police Station, Dist. Thane the applicants be released on bail on furnishing P.R. Bond in the sum of

Rs.25,000/- each with one or more sureties in the like amount;

- (iii) The applicants shall attend the investigating officer on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till filing of charge-sheet.
- (iv) Anticipatory Bail Application stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**