

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

ANTICIPATORY BAIL APPLICATION NO. 1157 OF 2020

Santosh Markand Tiwari

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

Mr.Karan Singh Rajput, Advocate for Applicant.

Mr. A.R. Kapadnis, A.P.P. for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th FEBRUARY 2021

PC.

1. This is an application for pre-arrest bail under Section 438 of Criminal Procedure Code. The applicant is apprehending arrest in C.R. No.I-302 of 2020 registered with Kasar Vadwali Police Station, Thane Rural.

2. The First Information Report was registered by Rajesh Mishra on 03.12.2020 for offences under Sections 323, 324, 427, 504 & 506 of Indian Penal Code (for short "IPC").

3. The case of the complainant is that his elder son Rohit Mishra had performed marriage with Anamika Tiwari on 24.02.2019. After the marriage, Anamika used to pick up quarrel with family members. On account of frequent quarrels,

offences were registered with Kasar Vadwali Police Station. On 02.12.2020, complainant received a call from his son Rohit. He informed him that his father-in-law, brother-in-law and mother-in-law had assaulted him by fist and kick blows. The complainant immediately went to Police Station. His son was taken to hospital for treatment. He made inquiry with his son. His son had informed him that he was assaulted by the aforesaid persons. During the assault he lost his gold chain. Complainant's son was undergoing treatment. The FIR was registered.

4. The applicant, his wife and two sons had surrendered before learned JMFC, Thane on 05.12.2020. They preferred an application for bail. The learned Magistrate was pleased to release the applicant and others on bail vide order dated 05.12.2020. While granting bail it was observed that the offences are bailable. They were directed to co-operate with the investigation and attend Investigating Officer for investigation.

5. The Investigating Officer submitted report before the Court of Learned Magistrate on 08.12.2020 stating that statement of Rohit Mishra was recorded. He has stated that the accused had assaulted him. During assault Santosh Tiwari (Applicant) had forcefully snatched the gold chain. Pravin Tiwari and Nitesh Tiwari had forcefully removed the ring from his finger. Hence, Section 394 of IPC has been added to the case.

6. On 08.12.2020, the Investigating Officer preferred an application for cancellation of bail granted to the applicant and others. The learned Magistrate decided the application by order dated 08.12.2020 by observing that the accused had surrendered before the Court on 05.12.2020 and on the same day they were released on bail as offences were bailable. Section 394 is now added. Hence, the concerned Investigating Officer may exercise his own powers as accused were released on bail only for offences under Sections 323, 324, 427, 504, 506, 427 of IPC and not under Section 394 of IPC.

7. In view of aforesaid order and the report filed by the Police, the applicant apprehended arrest. The applicant and others preferred an application for anticipatory bail in Sessions Court at Thane. Learned Sessions Judge vide order dated 15.12.2020 partly allowed the said application. The other accused Pravin Tiwari, Nitesh Tiwari, Ms. Manju Tiwari were granted relief under Section 438 of Cr.P.C. however, the application of the applicant was rejected. Learned Session Judge has observed that physical interrogation of applicant Nos. 2 to 4 is not necessary for progress of investigation. Apprehension of prosecution can be safeguarded by imposing condition against accused Nos. 2 to 4. The accused No.1 (applicant) is required to be interrogated as his role was active.

8. Learned advocate for the applicant submitted that the offences as stated in the FIR were bailable. The applicant was granted bail by the Court of learned Magistrate. Section 394 of IPC was added on the basis of concocted story. Section 394 is not attracted. Anamika has lodged several complaints against the complainant and his son. Anamika Mishra had lodged the FIR bearing No.305 of 2020 dated 05.12.2020 against the injured for the offences under Sections 375(c), 376 AB of IPC and Section 3(c) 4,7,8,9(N) and 10 of Protection of Children from Sexual Offences Act, 2012. Custodial interrogation of the applicant is not necessary. The applicant cannot be arrested without cancelling bail granted to him. Learned Magistrate has however directed the Investigating Officer to exercise the powers and in pursuant to that the applicant and the co-accused apprehended arrest. The application for anticipatory bail was opposed by the prosecution which would indicate that they were seeking custody of the applicant without cancelling bail granted to him. Reliance is place on the decision in the case of **Ravi Gaikwad and others Vs. State of Maharashtra (2018) SCC OnLine Bom 6439.**

9. Learned APP opposed the application for anticipatory bail. It is submitted that Section 394 has been added in this case. Custodial interrogation of the applicant is necessary. Serious allegations are attributed to the applicant.

10. Apparently, there are matrimonial disputes between the complainant, his son, other family members and the daughter-in-law Anamika. The applicant is father of Anamika. The complaints are lodged with Kasar Vadwali Police Station. The FIR which is subject matter of this application was registered on 03.12.2020. Accused were granted bail. After applying section 394 of IPC, investigation officer moved application for cancellation of bail. The said application was disposed of by directing the Investigating Officer to exercise its powers. Without cancellation of bail the investigating officer sought to arrest the applicant and others for the added offence under Section 394 of IPC. The FIR mentions that son of the complainant was assaulted by the applicant and other accused. The complainant made inquiry with his son (injured). The complainant's son had disclosed that he has lost his gold chain. Subsequently, statement of complainant's son was recorded and he has alleged that the applicant has removed his gold chain and other accused had removed the gold ring. The other accused were granted anticipatory bail. Applicant's application however is rejected. The allegations appearing in the statement of complainant is apparently afterthought. Although the inquiry was made by the complainant with the injured as reflected in the FIR, he had not disclosed the act of removal of his ornaments. Considering the nature of allegations, the applicant need not be subjected to custodial interrogation. In the decision

in the case of Ravi Gaikwad Vs. The State of Maharashtra (supra) relied upon by learned advocate for the applicant it was observed that in the event bail is granted while offences were bailable and subsequently additional non-bailable offence is invoked, bail granted to the accused has to be canceled vide Section 439(2) of Cr.P.C.

11. In the light of the aforesaid circumstances, this application has to be allowed.

ORDER

- (i) Anticipatory Bail Application No.1157 of 2020, is allowed;
- (ii) In the event of arrest of the applicant in connection with C.R. No.I-302 of 2020, dated 3rd December, 2020, registered with Kasar Vadwali Police Station, Thane Rural, the applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report the investigating officer on 17th, 18th and 22nd February, 2021, between 11:00 a.m. to 01:00 p.m., and, thereafter, as and when called for, till the next date of hearing.
- (iv) Anticipatory Bail Application No.1157 of 2020, stands disposed of.

(PRAKASH D. NAIK, J.)