

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**925 ANTICIPATORY BAIL APPLICATION NO.406 OF 2022
WITH APPLN/1256/2022 IN ABA/406/2022**

Saurabh S/o Rajkumar Bassaiye
Age: 22 years, Occu.: Education,
R/o. House No.3-8, 156, Line No.C-7,
Sanjay Nagar, Bassaiye Nagar,
Baijipura, Aurangabad.

..Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Jinsi, Aurangabad.

..Respondent

Advocate for Applicant : Mr. S.S. Thombre
APP for Respondent : Mr.B.V.Virdhe
Advocate for Informant : Mr.Balraj Prakash Pande

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 12th April, 2022

ORDER :-

1. The applicant is apprehending his arrest in connection with Crime No.0062 of 2022, registered with Jinsi Police Station, Aurangabad, District Aurangabad, for the offence punishable under Sections 354, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC).

2. Heard Mr.S.S.Thombre, learned Advocate for the applicant, Mr.B.V.Virdhe, learned APP for the respondent-State and Mr.Balraj Prakash Pande, learned Advocate for the informant.

3. It has been vehemently submitted by learned counsel for the applicant that the applicant is close relative of the informant and the families have dispute in respect of the property. The grandfather of the applicant has filed Special Civil Suit No.3 of 2013 before the Civil Judge, Senior Division, Aurangabad, for partition and separate possession as well as for declaration that the Sale-deeds executed by the father of the informant and her uncle are not binding upon him. Due to said rivalry and also the incidence of lodging reports in the past, the relationship is strained. Applicant's father had lodged the report for the offence punishable under Sections 325, 323, 504 read with Section 34 of the IPC and in that case accused No.1 Ravindra Radhakisan Bassaiye was convicted for the offence punishable under Section 324 of the IPC by learned Judicial Magistrate First Class, Aurangabad on 6th September, 2017. He has been sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to undergo simple imprisonment for one month. Other accused persons were acquitted. The said conviction has been challenged by the convicted accused before the Sessions Court by filing Criminal Appeal No.161 of 2017. Mother of the present applicant had lodged FIR against the informant, her father and other family members which came to

be registered vide Crime No.63 of 2022 for the offence punishable under Sections 143, 149, 323, 504, 506 of the IPC.

4. Now, in this FIR, the informant is alleging that when she was walking in the courtyard at about 03:00 p.m. on 12th March 2022, the applicant, his mother and paternal aunt went near her and asked as to why she is lodging litigations against them in the Court and why she is harassing them. The applicant had gone near her and torn her Kurti and outraged her modesty. So also he had given kicks in her stomach. He also uttered bad words against her and all the three accused had dragged her on the road. They had also given threats. The allegations made in the FIR do not require custodial interrogation. In fact the FIR suppresses the previous litigations and also the relationship. She has posed the applicant as if he is a third person. A falsity lies here. When the custodial interrogation is not necessary, the applicant deserves anticipatory bail.

5. Mr.B.V.Virdhe, learned APP for the respondent well assisted by Mr.Balraj Prakash Pande, learned Advocate for the informant strongly object the grant of discretionary relief. It has been submitted that the offence committed by present applicant is serious in nature. He has outraged modesty of a lady. So also

the father of the informant had lodged complaint application on 25th October 2021 stating that the present applicant and other accused persons were trying to grab his property. The seriousness of the offence is required to be looked into from the angle of the role attributed to the applicant. The applicant is residing in the same vicinity and therefore, possibility of similar crime or even more serious crime at the behest of the applicant cannot be ruled out.

6. At the outset, the contents of the FIR are already narrated in the previous paragraphs and therefore, the same are not reproduced here. From the nature of the offence itself custodial interrogation is not necessary as nothing is to be recovered from the applicant. No doubt that is not the only criteria which is required to be considered while considering application under Section 438 of the Code of Criminal Procedure but other factors such as seriousness of offence, possibility of repetition of the crime or even more serious crime, possibility of tampering with the evidence and some of the other factors are required to be considered. A balanced approach is definitely required in such matters. The Police papers would show that the statements of certain witnesses have been recorded. Statement of witness Santosh Vasantrao Korade would show that he is the tenant of

the father of the informant. He runs a Salon from the shop taken by him on rent. When he heard the cries of a lady at about 03:00 p.m. on 12th March, 2022, he came out and saw that two ladies and one male member were dragging the informant. Therefore, he called the father of the informant. He as well as father of the informant went near her. At that time, those three persons went away and then informant narrated them the incident. His statement, therefore, states that he had seen only the dragging act and not the earlier one. The statement of the father of the informant states that he came out after he heard voice of witness Santosh Korade. He then saw that the accused persons including present applicant were quarreling with his daughter in loud voice. He has not seen any other act. Though his statement contains what his daughter told him, that may not be acceptable in view of the hearsay evidence. Statement of the informant has also been recorded under Section 164 of the Code of Criminal Procedure.

7. A fact that is required to be noted is that taking into consideration Sections mentioned in the FIR, the maximum sentence that can be imposed is five years and therefore, the principles laid down in *Arnesh Kumar Vs. State of Bihar [(2014) 8 SCC 273]* will have to be followed and they have been reiterated

in *Rajesh Sharma and Others Vs. State of Uttar Pradesh and Another* [(2018) 10 SCC 472]. We are also required to consider the observations of Hon'ble Supreme Court in the case of *Joginder Kumar Vs State of U.P.* [(1994) 4 SCC 260].

8. Here in this case, in the Police papers, it can be seen that notice under Section 41(A) of the Code of Criminal Procedure was issued to the accused persons on 22nd March 2022. However, Police report does not state as to whether they had appeared before the Investigating Officer or not. It appears that the date given for appearance under said notice for the accused persons was 23rd March 2022 and prior to that Bail Application No.496 of 2022 was filed before the Sessions Court for Anticipatory Bail by the accused persons. On 23rd March, 2022 say was given by the Investigating Officer and three objections were taken; (i) that since informant and accused are relatives, possibility of repetition of crime cannot be ruled out, (ii) if the accused persons are released on anticipatory bail, they would pressurize the informant and witnesses and (iii) the informant would feel it insecure if the anticipatory bail is granted. All these three objections were not supported by any concrete evidence. These objections can be said to be taken in a routine manner. The routine things are not contemplated when it comes to the

allegations. Those three reasons are now also been repeated when the say has been given or the communication that has been given by the Investigating Officer to the learned APP.

9. When arrest cannot be in a routine way effected that too when the safeguards have been given for those offences which are punishable for less than seven years then a strong reason will have to be given by the investigating agency for objecting the anticipatory bail. The constitutional rights enshrined under Article 21 of the Constitution of India will have to be upheld though it comes with restrictions. Under such circumstance, the applicant deserves anticipatory bail under Section 438 of the Code of Criminal Procedure, however, taking into consideration the apprehension, necessary conditions will have to be imposed.

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of the applicant - Saurabh Rajkumar Bassaiye, in connection with Crime No.62 of 2022, registered with Jinsi Police Station, Aurangabad, Dist.Aurangabad, dated 12th March 2022, for the offence punishable under Sections 354, 323, 504, 506 read with Section 34 of the IPC, he be released on P.R.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

- iii) The applicant shall not tamper with the evidence of prosecution in any manner.
- iv) He shall not try to contact with either informant, witnesses or any other person connected with the case in any manner whatsoever.
- v) He should remain present before the Investigating Officer on every Monday and Thursday between 10:00 a.m. to 02:00 p.m. till filing of the charge-sheet.
- vi) It is clarified that breach of any condition would give liberty to the prosecution to file an application under Section 439 (2) of the Code of Criminal Procedure.
- Vii) Application to assist APP is allowed.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT