

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

ANTICIPATORY BAIL APPLICATION NO.696 OF 2023

**SAROJ @ SAROSH PARVEZ KHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Amarjitsing B. Girase, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State

**CORAM : R. M. JOSHI, J.
DATE : 19th JUNE, 2023**

P.C. :-

1. Applicant apprehends arrest in connection with Crime No. 252/2023 registered with Nandurbar City Police Station, Tal. And Dist. Nandurbar for the offence punishable under Sections 353, 354, 323, 509, 504, 506 read with Section 34 of Indian Penal Code.

2. The informant is a lady constable who has reported that on 22nd April, 2023 she was deputed at Andhare chowk for *bandobast*. It is alleged by her that at that time applicant came to the spot on motorcycle and abused her in filthy language and assaulted her. In the said assault damage is caused to her uniform. It is further alleged that thereafter the brother of the applicant came to the spot. She claims that the public assaulted the both applicant and his brother and thereafter they fled from the spot.

3. Learned counsel for the applicant states that there is delay of more than 6 hours in lodging report and the said delay indicates that it is a case of false implication. To support his contention he has relied upon a video which went viral on social media wherein it can be seen that the applicant is assaulted by the informant and other police personnel. It is submitted that in order to ensure that no action is taken against the police personnel the present false has been lodged. He further states that even if the statements in FIR are accepted, offence punishable under Sections 353 or 332 of IPC is not made out. Thus, according to him it is a fit case for protection of liberty of applicant.

4. Learned APP strongly opposed the submissions by stating that herein in the case wherein a police personnel while she was on duty at the public place is assaulted by the applicant. It is stated that even if the video which has gone viral is perused it only indicates the applicant had assaulted the informant first. She states that the incident in question which appears in the video viral is not the one in respect of which information is given but it has occurred subsequent thereto. Thus, according to him it is not a fit case to grant the anticipatory bail to the applicant.

5. There cannot be any justification whatsoever to any act of

assault against any lady and more particularly when she is a police personnel on duty. The question however arises for consideration before this Court is as to whether the offences punishable under Sections 353 and 332 would attract to the present or not because admittedly, the other offences are bailable.

6. Perusal of Section 353 of IPC indicates that in case where there is assault or use of criminal force to deter public servant from discharge of his duty then it becomes offence punishable under this provision. For attracts offence punishable under Section 332 IPC also there has to be causing of voluntary hurt to deter public servant from discharge of his duty. In the backdrop of these provisions, if the first information report is perused then it does not even show remotely that applicant had intended to prevent the informant from discharging of her duty. The first information report clearly states that owing to the previous disputes the applicant came to the spot hurled abuses against her and caused assault on her. It is not a case that applicant was stopped by the informant in discharge of her duty and that the applicant in response thereto has abused and assaulted her. In view of *prima facie* consideration of the first information report this Court finds substance in the contention of learned counsel for applicant about non applicability of offences punishable under Sections 353 and 332, without making any

observations on merit the issue is left to the decision of the Trial Court. In such circumstance when the custody of the applicant is not necessary for further investigation it is a fit case to grant anticipatory bail. Appropriate direction to the applicant to remain present before the Investigating Officer and cooperate the investigation would be sufficient for further investigation. Hence the application is allowed in interim order dated 3rd May, 2023 and directed to report concerned police station once in week till filing of the charge-sheet

(R. M. JOSHI, J.)

ssp