

VRJ

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

ANTICIPATORY BAIL APPLICATION NO.252 OF 2023

Tanaji Kondaji Kandekar & Anr.	... Applicants
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Aniket U. Nikam i/by Mr. Amit Icham for the applicants.

Ms. Rutuja Ambekar, APP for the respondent No.1/State.

Mr. Ajinkya Udane for respondent No.2.

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2023.07.07
11:41:31 +0530

CORAM : AMIT BORKAR, J.

DATED : JULY 5, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.02 of 2023 registered with Aadgaon Police Station, District Nashik dated 2nd January 2023 for offences punishable under sections 326, 324, 323, 504, 506 read with section 34 of the Indian Penal Code, 1860 and section 135 of the Maharashtra Police Act, the applicants are seeking relief under section 438 of the Criminal procedure Code, 1973.

2. According to the prosecution, one Suraj Pardeshi lodged a report against the applicants alleging that on 31st December 2022 at about 08:30 p.m., when the complainant was at his house at

that time his friend Mr. Vaishnav Amap called him and invited him for new-year party celebration at home and at that time several friends of the complainant were present there. Thereafter at about 09:00 p.m., the complainant went to Satsang Colony, Sawatamali Nagar and at that time quarrel took place between the complainant's friend and the Applicant No.1 on the point of parking. The complainant further alleged that the applicant No.2 also present there and he was abusing complainant's friends and the Applicant No.2 also threatened to assault them by showing Iron Sickle if they would park their vehicle. Thereafter, the present applicants assaulted Hemant Joshi and Vikki Kuwar with hands. When the complainant went to intervene at that time, the present applicant No.1 assaulted the complainant with Iron Rod on his head and due to which complainant fell down and blood was oozing from his head. Thereafter, the friends of the complainant shifted him at Apollo Hospital for medical treatment. Based on these allegations which are detailed in report, the offence came to be registered against the applicants.

3. The applicants, therefore, filed an application before the Sessions Court for relief under section 438 of the Criminal Procedure Code, 1973, which came to be rejected by order dated 20th January 2023.

4. Learned advocate for the applicants submitted that the incident occurred in heat of passion. There are cross reports filed by the informant and the applicant teacher. It was night of 31st December 2022, the informant along with his friends were creating ruckus near the residence of the applicant which resulted

in the incident alleged in the report. There was no intention to cause injury to the informant. He is ready to cooperate with the investigation. There are no antecedents to his discredit. He is working as a teacher in private educational institute. He, therefore, prayed for protection under section 438 of the Criminal Procedure Code, 1973.

5. Per contra, learned APP for the State invited my attention to the injury certificate to urge that act of the applicant No.1 has caused grievous injury to the informant on head. Weapon used is iron rod. Injury is on head which is vital part. Therefore, the applicant is not entitled to protection under section 438 of the Code of Criminal Procedure, 1973.

6. Having perused the first information report and statements of witnesses along with material produced on record, it appears that prima facie role attributed to the applicant No.1 is of assault on informant's head. The injury certificate produced on record supports the case of the prosecution. As per the injury certificate, following are the injuries.:

Right frontal clw approx 4.5 c.m. in length sutured at Apollo Hospital, Nashik. Right frontal epidural hemorrhage with right frontal bone fracture as per C.T. Scan report. As per MRI Cervical Spine C-5-C6 PIVD with nerve root compression.

7. Considering the role attributed to the applicants and injury of grievous nature on vital part, power under section 438 cannot be exercised as the prosecution has made out a prima facie case against the applicants.

8. The Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 has emphasized need of prima facie case by observing thus:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. On overall view of the matter, application under section 438 deserves to be rejected. In respect of applicant No.1 the anticipatory bail application stands rejected.

10. In so far as the applicant No.2 is concerned, on prima facie consideration of material, active role is not attributed. Therefore, the applicant No.2 is entitled to protection under section 438 of the Criminal Procedure Code, 1973. Hence, following order:

- a)** In the event of arrest of the applicant No.2 in connection with C.R. No.02 of 2023 registered with Aadgaon Police Station, District Nashik dated 2nd January 2023 for offences punishable under sections 326, 324, 323, 504, 506 read with section 34 of the Indian Penal Code, 1860 and section 135 of the Maharashtra Police Act, he be released on bail on furnishing PR Bond in the sum of Rs.25,000/-, along with one or two sureties in the like amount;
- b)** The applicant No.2 shall remain present before the investigating officer on 10th, 12th and 14th July 2023 between 11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;
- c)** The applicant No.2 shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- d)** The applicant No.2 shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

11. The anticipatory bail application stands disposed of in above terms.

(AMIT BORKAR, J.)