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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.647 OF 2023**

Gulshan Singh

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Umesh S. Iyer with Mr. Jitendra Jagtap for the Applicant.

Mr. S. R. Agarkar APP for the Respondent-State.

Mr. A. S. Takawade PSI, Thane Nagar police station.

CORAM : S. M. MODAK, J.

DATED : 8TH JUNE 2023

P.C. :

1. Heard learned Advocate Mr. Iyer for the Applicant and learned APP for the Respondent-State.

2. The Investigating Officer is present. This Court has already observed in the order dated 3rd April 2023, that this Court is not inclined to grant anticipatory bail. Adjournment was sought for the reason that the Applicant wants to place reliance on some of the judgments. Though the Applicant tried to test his luck before the Vacation Court, however, he was not successful. He just produced copies of the judgments.

3. Today, I have gone through these judgments. They are as

follows :

- (i) Rajesh Ananda Shetty Vs. The State of Maharashtra¹*
- (ii) Santosh Govind Garel & Anr. The State of Maharashtra²*
- (iii) Lalmani Ramraj Yadav Vs. The State of Maharashtra³*
- (iv) Suresh Sankharam Nangare Vs. The State of Maharashtra⁴*

4. In three of these orders, there is categoric observation that there is no grievous hurt/no serious injury/offence under section 326 of IPC is not disclosed. Here the facts are different. Hence, those observations will not be helpful to the Applicant. The last judgment of the Hon'ble Supreme Court is on the point of applicability of section 34 of IPC. It was observed that pre-arranged plan and prior concert, is necessary for invoking section 34 of IPC. However, it depends upon the facts and circumstances of the case. The common intention can be formed on the spot itself, without there being pre-arranged planning. Hence, it is also not useful to the Applicant.

5. Today, I am inclined to grant anticipatory bail only for the reason that the Applicant through his Advocate has shown readiness

1 Cri. Appeal No.620 of 2007 dt. 26/02/2007.

2 ABA No.660/2011 dt. 8/08/2011

3 ABA No.258/2022 dt. 1/02/2022

4 2012 (9) SCC 249

to give all sort of assistance to the police including assistance of giving details of other two accused persons. It is a fact that the police could not arrest remaining two accused, even though they are investigating offence since January 2023. It is submitted that all three accused were residing at Thane, in one room and they are bachelors. Their native place is at Uttar Pradesh.

6. When asked learned APP, after taking instructions, submitted that for some reason or other the police could not go to Uttar Pradesh. The Applicant has mentioned his address at Uttar Pradesh also. It is true that if any offence is registered, it is primary duty of the police to secure presence of accused and if there is material, then to file charge-sheet.

7. Considering above circumstances, I am inclined to grant anticipatory bail subject to following conditions :

O R D E R

(a) In the event of arrest, in connection with C.R. No.19 of 2023, registered with Thane Nagar police station for the offences punishable under sections 323, 324 read with 34 of IPC, Applicant-Gulshan Singh be released on bail on furnishing personal bond and surety bond of Rs.25,000/-.

- (b) The Applicant to arrange for one surety, who is having residence in the limits of Thane Municipal Corporation.
 - (c) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
 - (d) The Applicant shall give attendance to the Thane Nagar police station on every Monday and Friday from 10 am to 12 noon until filing of the charge-sheet.
 - (e) The Applicant is directed to cooperate with police in carrying out the investigation.
 - (f) Needless to say, violating of the condition above will make the Applicant liable for cancellation of anticipatory bail, after notice to the Applicant.
8. Application is disposed of accordingly.
9. These are my prima facie observations and the trial Court may not be influenced by that.
10. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]