

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

ANTICIPATORY BAIL APPLICATION NO. 1307 OF 2023

1. Amol Kantilal Shelke
2. Nilesh Bhauso Shelke
3. Akshay Suresh Rupnawar
4. Vishal Satish Narute
5. Rohit Ganpat Rupnawar
6. Abhishek Suresh Rupnawar
7. Mahadeo Bharat Rupnawar
8. Kiran Dyneshwar Rupnawar
9. Satish Dinkar Narute
10. Mayur Sanjay Rupnawar
11. Nilesh Vitthal Rupnawar
12. Umesh Vitthal Rupnawar

...Applicants

Vs.

1. The State of Maharashtra
2. Sunil Mahadev Dhaigude

...Respondents

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 873 OF 2023
WITH
INTERIM APPLICATION NO. 1813 OF 2023**

1. Tushar Namdeo Dhumal
2. Viraj Namdeo Dhumal
3. Namdeo Ganpat Dhumal

...Applicants

Vs.

The State of Maharashtra

...Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 1487 OF 2023**

Abhijit Gorakh @ Gorakhnath More	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Rahul Dhaigude - Advocate for the Applicant in ABA No. 1307 of 2023.

Mr. K. U. Nikam with Mr. Prasad Avhad with Om Latpute with Mr. Surajsingh Malas – Advocate for the Applicant in ABA 873 of 2023 and IA No. 1813 of 2023.

Mr. Akash R. Pandey – Advocate for the Applicant in ABA No. 1487 of 2023

Mr. H. J. Dedhia – APP for the Respondent-State

CORAM : S. M. MODAK, J.

RESERVED ON : 24th JULY, 2023

PRONOUNCED ON : 11th AUGUST, 2023

P. C. :-

1. Heard learned Advocate Shri Nikam for Applicants in Anticipatory Bail Application No. 873 of 2023, learned Advocate Shri Dhaigude for Applicants in Anticipatory Bail Application No. 1307 of 2023 and learned Advocate Shri Akash Pandey for the Applicant in Anticipatory Bail Application No. 1487 of 2023 and learned APP for the Respondent-State.

2. The Applicants in Anticipatory Bail Application No. 873

of 2023 were already granted interim protection as per Order dated 24/03/2023. I have heard all of them on the point of the confirmation. The Anticipatory bail is sought in respect of C.R. No. 100 of 2023 registered at Lonand Police Station. There is also counter F.I.R. registered at C.R. No. 101 of 2023 at the same Police Station. In support of that offence Anticipatory Bail Application Nos. 1307 of 2023 and 1487 of 2023 are filed. There is no interim protection. I have heard learned Advocate Shri Dhaigude, learned Advocate Shri Nikam, learned Advocate Shri Pandey and learned APP.

3. Not only that but there are two more offences registered at the same Police Station at C.R. No. 99 of 2023 on 05/03/2023 and C.R. No. 108 of 2023 on 08/03/2023.

4. It can be said that these new offences at C.R. No. 100 and 101 of 2023 have got a background of earlier incident. Law of nature presupposes that if there is an action there is bound to be reaction. This is not the stage to decide whether the incident of assault on Amol Shelke on 05/03/2023 at about 04.00 p.m. by the Applicants in Anticipatory Bail Application 873 of 2023 happened first or whether the incident of arson as mentioned in C.R. No. 101

of 2023 happened first.

5. Interim protection is granted to the Applicants in Anticipatory Bail Application No. 873 of 2023 on the basis of arguments made on that date. It does not mean that interim protection has to be confirmed, and there is no interim protection in Anticipatory Bail Application No. 1307 of 2023, it does not mean that their Anticipatory bail application is to be rejected. Ultimately, both these sets of the applications are to be decided on the basis of the materials placed before me. It consists of filing of the charge-sheet against some of the accused persons in C.R. No. 101 of 2023.

6. It is true that three Applicants in Anticipatory Bail Application No. 873 of 2023 are named in the F.I.R., whereas there were 12 Applicants in Anticipatory Bail Application No. 1307 of 2023. It is true that except Amol Shelke i.e. Applicant No. 1, Applicant Nos. 2 to 12 in Anticipatory Bail Application No. 1307 of 2023 are named in the F.I.R. bearing C.R. No. 101 of 2023. It is also true that the said Amol got injured in an incident that took place on 05/03/2023 at about 04.00 p.m.. Whereas the incident of the arson took place on the same day at about 4.30 to 05.00 p.m.. The spot of the incident in C.R. No. 100 of 2023 is in front of Thorat Mistry

Garage on Lonand to Neera Road. Whereas the spot of the incident in C.R. No. 101 of 2023 is at the house of the Namdeo Ganpat Dhumal. There is no idea in mind as to suggest that the spots are different but these are *prima-facie* observations after reading the F.I.R..

7. Though it is true that we are not concerned with two offences at C.R. Nos. 99 and 108 of 2023, the background mentioned in them cannot be overlooked. On reading them, we can find that the following are the important events:-

- a) Vinod Rupnawar was constructing a house and Dhumal family complains that this construction is on a public road.
- b) Whereas Rupnawar family claims that it is not on public road. The photographs showing that house is not on road is on page no. 86 of Anticipatory Bail Application No. 1307 of 2023.
- c) There is complaint made by Dhumal family members to Sub-Divisional Officer on 28/02/2023 (page no. 27) of Anticipatory Bail Application No. 873 of 2023.
- d) The family members of the Rupnawar attacked the house of the Asha Namdeo Dhumal on 05/03/2023 at about 10 a.m.. This is the subject matter of C.R. No. 108 of 2023.

- e) Whereas the family members of the Dhumal alongwith Sunil Dhaigude demolished the construction of the house made by Vinod Rupnawar on 05/03/2023 at about 11.30 a.m., at page no. 35, in Anticipatory Bail Application No. 873 of 2023, when Vinod's wife Sheetal confronted them, they beat her, at that time meeting was going on in the school near the house of the Vinod. This is subject matter of the F.I.R. bearing C.R. No. 99 of 2023.

8. On this background, the incident mentioned in the C.R. Nos. 100 of 2023 and 101 of 2023 and documents needs to be considered. The important events are as follows:-

The facts alleged in the F.I.R. No. 99 of 2023 and submission made in ABA No. 873 of 2023 are as follows:-

- (i) The Applicant-Viraj and Applicant-Tushar are sons of the Applicant-Namdeo.
- (ii) They assaulted the Amol Shelke with the help of the sword and stick.
- (iii) Amol got seriously injured. Photographs showing his injuries are filed on page no. 85 of ABA No. 1307 of 2023. The F.I.R. is lodged by one Jitendra Jadhav in

intervening night of 05/03/2023 and 06/03/2023 at 02.05 hours.

(iv) The offence is under Sections 143, 147, 148, 149, 307, 506, 323 of the Indian Penal Code and under Section 4 of the Arms Act.

(v) The first informant-Jitendra called injured-Amol and Akshay near the Thorat Mistry Garage and these three Applicants being members of the Dhumal family assaulted Amol Shelke for the reason that unnecessarily he has interfered in the dispute in between Dhumal and Rupnawar.

9. The contention of Shri Nikam is that there is only specific allegation against Tushar Dhumal about assaulting with sword. Whereas against Viraj Dhumal and his father Namdeo Dhumal though there is an allegation of the possessing sticks, there is no allegation that they have used those sticks. There is contention that the Applicant-Namdeo was not present at the spot of the incident because he was present in the Lonand Police Station at about 12.30 noon on 05/03/2023 and Police have refused to accept his

complaint. It is in respect of attack on his house by the family members of the Rupnavar at about 10.30 a.m. on 05/03/2023.

10. His further grievance is that at the same time at about 3.30 p.m., the family of the Rupnavar have committed arson. Copy of that complaint addressed to the Superintendent of Police is on page no. 66 of Anticipatory Bail Application No. 873 of 2023. There was request to direct the Police of the Lonand Police Station to verify the CCTV footages. However it was not working.

11. There is assessment list issued by the Sai Hospital and Criticare, Lonand in respect of injured Amol. It is on page no. 104 to 107 of Anticipatory bail application No. 1307 of 2023.

12. Mr. Nikam wants to take advantage of the entries made therein in order to support his contention of the false implication. He pointed out the following lacunae from page no. 106.

- (i) There was history of fight between the mob.
- (ii) Informant were Nilesh Shelke and one Akshay.
- (iii) Even though Nilesh knows these Applicants, he has not named them.
- (iv) In the history given there is reference of sticks, rods etc. but sword is not named.

13. Learned APP submitted that injuries to witness-Amol are serious and weapons are to be recovered.

The facts alleged in the F.I.R. No. 101 of 2023 and submissions made in Anticipatory Bail Application Nos. 1307 of 2023 and 1487 of 2023 are as follows :-

- (a) Except Amol-Applicant No. 1, all are named in the F.I.R..
- (b) The incident took place on 05/03/2023 at about 04.30 to 05.00 p.m.
- (c) There are 22 accused named in the F.I.R, the Applicant Nos. 2 to 12 are few amongst them. There are also subsequently added accused.
- (d) Some of them were granted anticipatory bail by the Court of the Additional Sessions Court, Satara on 26/04/2023.
- (e) It is common order, page no. 29 of Anticipatory Bail Application No. 1307 of 2023. Parity is claimed. It is disputed by learned APP for the reason that they were

not named in the F.I.R.. Whereas present Applicants are named in the F.I.R..

14. All the accused named in the F.I.R. have formed unlawful assembly and went to the house of Namdeo Dhumal and put fire on stored articles, four wheeler, two motor cycles and cattle shed. The photographs showing burning of the house and vehicles are annexed at page no. 42 to page no. 51 of Anticipatory Bail Application No. 873 of 2023. The first informant is one Sunil Dhaigude and F.I.R. is registered in the early morning at 04.14 a.m. on 06/03/2023 under Sections 436, 452, 143, 147, 148, 149 and 324 of the Indian Penal Code.

15. Initially, there is no allegation of stealing of ornaments from house of Namdeo Dhumal. Subsequently, on the basis of the statements the Police have added Section 452, 395, 307 of the Indian Penal Code.

16. The contention of Mr. Dhaigude is that this is after thought and those allegations are made belatedly.

17. Whereas learned APP explained to me that daughter of the Namdeo Dhumal by name Sayali Dhumal who has explained

how ornaments costing to Rs. 9,20,000/- were stolen from the house. Her statement is dated 07/03/2022, at page no. 221 of the charge-sheet filed in Anticipatory Bail Application No. 1307 of 2023. Her statement is also recorded under Section 164 of the Code on 09/03/2023 on page no. 258.

18. Whereas Shri Dhaigude submitted that statement by Sayali is hearsay and that is why she has not narrated who has carried that boxes and bags. According to Mr. Dhaigude the statement of Asha Dhumal on page nos. 223 and 260 is on the basis of the hearsay information.

19. Statements of the witnesses-Tushar Dhumal and Mohan Thombare were recorded under Section 161 of the Criminal Procedure Code on 25/03/2023 on page nos. 352 and 346 respectively.

20. Whereas their statements recorded under Section 164 of the Criminal Procedure Code on 27/04/2023 are on page no. 266 and 268. Witness-Tushar was present in his house at the time of the incident at 04.30 p.m. on 05/03/2023. After seeing the mob consisting of these Applicants, he concealed himself in the house witnessed the incident from the window. Due to fear somehow he

came out of the house and after going at the distance he saw Applicant No. 2-Nilesh, Accused-Santosh, Applicant No. 11-Nilesh, Applicant No. 12-Umesh, Applicant No. 4-Vishal came out of the house alongwith bags and boxes consisting of the ornaments and bag consisting of cash of Rs. 5,00,000/-.

21. Whereas the witness-Mohan has also stated the same thing and also stated about Applicant-Tushar concealed himself in the house and thereafter, coming out of the house.

22. Whereas as per learned Advocate Shri Daigude in a statement of Tushar recorded under Section 164 of the Code, he has simply stated about stealing the ornaments and the cash. But there is no specific reference who has stolen those ornaments.

23. Whereas witness-Mohan in a statement under Section 161 and under Section 164 of the Code of Criminal Procedure has named the Applicants Applicant No. 2-Nilesh, Applicant No. 11-Nilesh, Applicant No. 12-Umesh, Vinod, Santosh, Applicant No. 4-Vishal possessing the boxes and the bags. Applicant No. 11 Nilesh is not named in a statement under Section 164 of the Code of Criminal Procedure.

24. Mr. Dhaigude submitted that even though the first

informant Sunil is eye witness to the incident in F.I.R. and in his statement under Section 164, he has not mentioned about stealing of the ornaments and the cash. The statement of the Jay Bahadur Bisht on page no. 342 who is driver on the dumper of Namdeo Dhumal is on the basis of the hearsay information. He has received only simple injuries. His certificate is there on page no. 253. The statement of the Bhauso Kokare is on page no. 343 and Kalawati Dhaigude on page no. 344 is also on the basis of the hearsay information.

25. Mr. Dhaigude relied upon following judgments:-

- (i) *Sushil Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr.*¹

It is on the point of personal liberty of an individual, the Constitutional Bench of the Hon'ble Supreme Court has dealt with the issue about the duration of the anticipatory bail. It should not be limited to fixed period. Once granted, it will continue at the end of the trial.

26. The Applicant Abhijit in Anticipatory Bail Application No. 1487 of 2023 though named in the F.I.R. at Sr. No. 16, there is no specific allegation against him.

¹ 2020 ALL MR (Cri) 497 (S.C.)

27. Learned APP submitted that in case of rioting, it is difficult to narrate each and every incident in F.I.R. and F.I.R. is not encyclopedia of events. According to him, the purpose of the F.I.R. is to lodge the complaint as early as possible and according to him, ultimately, it depends upon several factors that is to say whether the first informant knows all the accused persons, from where he has seen the incident and how much time he was having to witness the incident. According to him, all these Applicants have taken law into their own hands and he has invited my attention to the photographs of burning and his emphasis is on the manner in which they have taken law into their own hands and they do not deserve sympathy. According to him, even though the Applicants are having some dislike to acts of the Rupnawar family, this is not the way of expressing the displeasure.

Case Law

28. Learned Advocate Shri Nikam relied upon following judgments:-

- (a) He relied upon observation in case of **Sanatan Pandey Vs. State of Uttar Pradesh and Anr.** in Special Leave Petition (Criminal) No. 7358 of 2021, dated 07/10/2021 in order

to oppose the anticipatory bail.

A person who is charge-sheeted in the year 2017 and his quashing petition was dismissed and though he was directed to surrender he has not surrendered. The Hon'ble Supreme Court refused to grant him anticipatory bail who is not co-operating the investigation. The contention is merely because charge-sheet is filed is no ground to grant anticipatory bail.

Consideration

29. No doubt it is true that personal liberty of an individual is of the immense importance. But it is subject to reasonable restrictions. It is subject to right of the investigating agency to carry out the investigation. The Court has to balance in between the personal liberty and such right. Right to investigation includes the right to collect the materials. Some time it can be collected without arrest of the accused and some time it requires custody of the accused. It is no doubt true that the legislature have also emphasized on liberty of an individual particularly when an offences are punishable with seven years imprisonment by incorporating the Section 41(a) of the Criminal Procedure Code and the Hon'ble Supreme Court has issued various directions time and again. But

both these present offences do not fall within that category. Major sections are Section 307 of the Indian Penal Code and under Section 436 of the Indian Penal Code.

30. While dealing with the Application in such offence the consideration before this Court are what are the allegations in the F.I.R. that is to say the general or specific. For what purpose the custody is required and what type of message we are going to send to the society while dealing with such application. It is also true that we can gather these allegations either from the F.I.R or from statement of the witnesses.

31. If these yardsticks are applied in Anticipatory Bail Application No. 873 of 2023, we may find that all these Applicants are named in the F.I.R.. There is specific allegation about use of the sword by the Applicant-Tushar. Whereas, Applicant-Viraj and Namdeo were possessed with weapon stick. But in counter F.I.R. Tushar is in room. When the history is narrated to the Doctor, it is not expected for the Doctors to note down the name of the assailants. The history has got for a limited purpose.

32. So I am not impressed by the said arguments of Mr. Nikam. I am inclined to grant anticipatory bail to the Applicant

Namdeo only. It is for the reason that on 06/03/2023, he has lodged the complaint with the Superintendent of Police, Satara and he has mentioned that at 12.30 noon when he went to the Lonand Police Station, his complaint was not recorded and when he was there in the Police Station at about 3.30 p.m., his house was ransacked and put on fire.

33. Complaint filed by his wife in respect of incident on 05/03/2023 after 10.00 a.m., about pelting stones on their house. F.I.R. is registered in the intervening night of 07/03/2023 and 08/03/2023 at 00.38 hours. This investigation is also transferred from Lonand Police Station to Phaltan Police Station. I am not inclined to accept this contention.

34. So far as Applican-Viraj is concerned because he is named in the F.I.R. it is not always that there should be specific role mentioned in the F.I.R., it can be part of the investigation. Applicant-Tushar is concerned, no doubt he is witness in an offence of arson. But timing and spot in the the offences are different. Ultimately Court has to apply some yardstick. No case for anticipatory bail is made out but Applicant Tushar and Applicant Viraj.

35. So far as Anticipatory Bail Application No.1307 of 2023

is concerned, I am inclined to grant anticipatory bail to the Applicant No. 1-Amol because he is injured in an offence bearing No. 100 of 2023. All other Applicants are named in the F.I.R.. When applied this test, I am inclined to grant anticipatory bail to Applicant No. 1-Amol, Applicant No. 2-Nilesh and Applicant No. 3-Akshay. In the F.I.R. there is allegation of putting the house and vehicles on fire by group of accused persons. It is lodged by Sunil Dhaigude. It can not be expected that the first informant should narrate each and every thing in the F.I.R. when assault is by a mob consisting by several persons. Every one witnessed the incident from different angle.

36. There are two aspects. One is committing offence of arson and second is stealing ornaments (which is not part of F.I.R. but part of statement of witnesses). But fact remains that these Applicants are named in F.I.R.. It requires preparation for putting houses, vehicles on fire. Considering the damage caused as seen in the photographs, involvement of more persons is warranted. However, I am excluding Applicant No. 1-Amol, Applicant No. 2-Nilesh and Applicant No. 3-Akshay. Because Applicant Nos. 2 and 3 were there in the hospital. They are referred in case papers.

37. It is no doubt true that Mr. Dhaigude has tried to

differentiate in between the statement under Section 164 and statement under Section 161 of the Code of Criminal Procedure. This is not the stage for appreciation. Even he tried to point out the inconsistencies in between two sets of the witnesses. One who are named and those who are not named.

38. I am not inclined to accept this contention for remaining three Applicants. Liberty of the custodial interrogation needs to be granted. Case for rejection is made out. Though for a while, if we consider theory of theft as after thought still the incident of arson has taken place.

39. Whereas for the Applicant-Abhijit in Anticipatory Bail Application No. 1487 of 2023 is also named in the F.I.R.. Specific allegation is not required.

40. Hence following Order:-

ORDER

Anticipatory Bail Application No. 873 of 2023

- (i) Anticipatory Bail Application No. 873 of 2023 is partly allowed.
- (ii) Interim Order passed on 24/03/2023 is confirmed for Applicant No. 3-Namdeo Ganpat Dhumal.
- (iii) He is directed to co-operate the Police as and when

required.

- (iv) Applicant shall not threaten the prosecution witnesses.
- (v) Interim protection granted to the Applicant No. 1-Tushar Dhumal and Applicant No. 2-Viraj Dhumal stands vacated.

Anticipatory Bail Application No. 1307 of 2023

- (vi) Anticipatory Bail Application No. 1307 of 2023 is partly allowed.
- (vii) In case of arrest in connection with C.R. No. 101 of 2023 registered with Lonand Police Station for the offence punishable under Sections 307, 395, 436, 452, 143, 147, 148, 149, 324 of the Indian Penal Code, the Applicant No. 1-Amol, Applicant No. 2-Nilesh and Applicant No. 3-Akshay be released on furnishing Personal Bond and Surety Bond in sum of Rs. 15,000/- each.
- (viii) They are directed to give attendance to Lonand Police Station on 02nd and 04th Friday from 10.00 a.m.. to 12.00 noon until filing of the charge-sheet.
- (ix) Application of bail for the Applicant Nos. 4 to 12 is rejected.

Anticipatory Bail Application No. 1487 of 2023

- (x) Anticipatory bail Application No. 1487 of 2023 is also rejected.

41. It is made clear that these are my prima facie observations.

42. Anticipatory Bail Application Nos. 1307 of 2023, 873 of 2023 and 1487 of 2023 and Interim Application No. 1813 of 2023 are disposed of in the aforesaid terms.

43. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]

44. After pronouncement of the Order, learned Advocate Mr. Nikam for the Applicants in Anticipatory Bail Application No. 873 of 2023 has requested that interim protection be extended for three weeks as in the next week there is a vacation. It is opposed by learned APP.

45. Let interim protection be extended by three weeks from today.

[S. M. MODAK, J.]