

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

ANTICIPATORY BAIL APPLICATION NO. 1498 OF 2023

Manoj Kumar Hansraj Dubey	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Anil S. Pandey a/w Mr. Nitesh K. Pandey - Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 12th JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.
2. The F.I.R. is registered with Kolsewadi Police Station on 11/06/2019 against in all four named accused persons. Out of them, the present Applicant is accused no. 1 and his son Vikas is accused no. 2. Both of them are yet to be arrested. Whereas accused no. 3- Ajit and accused no. 4 Dharmendra are charge-sheeted in the year 2019 itself.
3. Apart from the merits, learned APP opposed the anticipatory bail for the reason that even though his anticipatory bail

application was rejected by the Court of the Additional Sessions Judge, Kalyan firstly on 19/10/2019, at page no. 100 and secondly, on 04/02/2020, the Applicant has approached this Court after a long delay. He wants to contend that the present Applicant is evading the arrest for all these years and his conduct does not entitles him to grant of discretionary relief.

4. Whereas learned Advocate for the Applicant tried to explain that this Court has granted anticipatory bail to co-accused i.e. accused No. 3-Ajit and accused no. 4-Dharmendra, by way of interim protection on 30/08/2019, and it was confirmed on 07/08/2021. That is why the present Applicant has filed second anticipatory bail application before the Sessions Court. However, it is matter on record that on both occasions request of the present Applicant for anticipatory bail is rejected on merits.

5. Learned Advocate for the Applicant tried to impress upon me that the certificate issued by Janaki Global Multispeciality Hospital dated 02/07/2019 (page no. 79) does not disclose an offence under Section 326 of the Indian Penal Code. His emphasis is that there is no corresponding injury, when there is an allegation that the present Applicant has assaulted the first informant with a

help of knife. Further, he emphasis is that the certificate mentions that the first informant was assaulted by 10 to 15 people whereas F.I.R. only mentions the name of the four accused persons.

6. Though he tried his level best to convince this Court, I am not impressed by his argument. It is for the reason that the same certificate mentions that there are ten stitches given on the head parietal region of the first informant-Dharmendra Shukla. The certificate mentions that he was admitted on 10/06/2019 and the certificate is of the dated 02/07/2019. It means the certificate on page no. 79 is not only certificate but there ought to have earlier case papers, they are not annexed to the application. There can be stiches only when there is incised/cut wound. Even no one is present from the concerned Police Station.

7. No doubt it is true that the certificate mentions assault by 10 to 15 people, whereas F.I.R. mentions that name of only four accused persons. But ultimately the reference in the certificate is on the basis of the history given. One does not know what was condition of the patient when history was narrated. It is also not clear whether history is told to the Doctor by the first informant himself or by someone other. So this lacunae alleged in the

certificate does not appeal to my conscious.

8. As against this there is specific reference of the present Applicant in the F.I.R. lodged by the first informant-Dharmendra Shukla. The Applicant was possessed with knife and there is an allegation that he has assaulted and used the knife. The two accused persons who are granted anticipatory bail was granted firstly on 30/08/2019. This Court has observed that the grievous injuries caused to the first informant is not caused by the Applicant No. 1 - Ajitkumar therein but it is caused by the present Applicant- Manoj. So role of the present Applicant can be differentiated from the role of the two accused person who have been granted anticipatory bail. Furthermore this argument could have been accepted provided the applicant has approached this Court earlier prior to gap of long period.

9. The offence under Section 326 is punishable with the life imprisonment. His custodial interrogation is required. Even no satisfactory explanation is given why after rejection of the second anticipatory bail in the year 2020, the Applicant has not approached this Court on the earlier occasion. There is reason to believe that he was evading the arrest that is why he has not approached this Court

earlier. So no case for anticipatory bail is made out and it is rejected.

10. It is made clear that these are my *prima-facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

[S. M. MODAK, J.]