

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

ANTICIPATORY BAIL APPLICATION NO. 1677 OF 2023

1) Abdullah Masihuddin Ansari and
2) Anas Hussain Zahid Hussain Ansari ...Applicant
vs.
The State of Maharashtra ...Respondent

Adv. Vivek Punjabi a/w Adv. Pranhita Singh - Advocate for the Applicant

Adv. Aniket Ujjwal Nikam, Aashish Satpute, Piyush Toshnival, Amit Icham – Advocate for the Complainant

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

CORAM : S. M. MODAK, J.

DATE : 22nd JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicants and learned Advocate for the first informant and learned APP. The investigating officer is not present. So this Court has two options either to plainly adjourned the matter for hearing the learned APP after taking instructions or to pass certain orders on the request to grant interim relief.

2. Learned Advocate for the Applicants submitted that let the Applicants may be protected. It is opposed on behalf of the learned Advocate for the first informant.

3. I have gone through allegations in the F.I.R. and the documents which are annexed to the application. The Applicants have annexed certain documents about their qualifications, the payment receipts issued by them in favour of the first informant and certain photographs showing the nature of the work which is going on in the premises belonging to the first informant.

4. It seems that the incident of 31/05/2023 has taken place in the flat of the first informant-Ms. Sahirabano Ansari. It seems that both the Applicants have gone to her house, whereas they were called at the site. Initially, there was certain discussion about the receipt issued by the Applicants. They have demanded back the receipts issued by them towards payment made by the first informant. The first informant refused to handover the receipt and on that, both these Applicants quarrelled with the first informant and then he has inserted hand in the kurta and it was torn and after that the Applicant No. 1- Abdullah have pulled her chudidar.

5. On reading the same, it is revealed that there is a specific allegation against both of these Applicants. It is contended that Applicant No. 2 is professional and he alongwith Applicant No. 1 are running the business of undertaking the civil work.

6. Learned Advocate Shri Nikam submitted that his client has made the complaint to the Police, there by asking them to invoke the provision of Sections 376 read with 511 of the Indian Penal Code. The reply given by the first informant before the Sessions Court in the Anticipatory bail application is there on page no. 58. It also mentions about making the application to the Police.

7. After taking instructions Mr. Nikam submitted that the statement is recorded under Section 164 of the Criminal Procedure Code. It is true that today investigating officer is not present, we cannot verify the allegation by considering investigation papers. It may be true either the statement under Section 164 may be recorded or may not be recorded. No doubt the averments in the F.I.R. do not mention about invocation of the provision of the Section 376 of the Indian Penal Code.

8. However looking to the allegtion in the F.I.R., I do not find any case for interim protection is made out. The allegations are serious. So this Court feels that no case for anticipatory bail even at interim stage is made out.

9. Ultimately, in such a case if anticipatory bail is granted, the wrong message will be sent to the society. It is pertinent to note

that the first informant is staying alongwith her sister in that flat. Even when the applicants were called at site, they have gone to the residential flat of the first informant.

10. The contention that false case is filed by her in order to avoid payment of remaining amount of civil work cannot be accepted because yet the civil work is not over. It is clearly visible from the photographs annexed to the application. So no case for anticipatory bail is made out. Even the parties could have sorted out the issue about civil work, its completion and payment amongst themselves. Many a time it is the anger which makes a person to act beyond normal behaviour. Atleast the stage has not gone out of control. Because ultimately the first informant will certainly interested in completion of the civil work and applicants in getting their legal dues.

11. But at this stage, I do not find any alternative but to dismiss the application. Application is disposed of. Let Vakalatnama be filed by learned Advocate Shri Nikam for the first informant within two weeks.

[S. M. MODAK, J.]