

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO.1997 OF 2023

Abhinav Prannath Sharma	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Aashutosh Srivastava, for the Applicant.

Mrs. Rutuja Ambekar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.555 of 2023 registered with Hinjewadi police station, Pune for offences punishable under Sections 307 r/w 34 of the Indian Penal Code, 1860 (for short 'IPC'), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. According to prosecution, the incident occurred on 25 April, 2023 around 13:15 hours after the completion of cricket match, due to incident occurred during cricket match, there was assault by the applicant on the victim. According to prosecution, the applicant assaulted victim by cricket bat on his head. It is alleged that the applicant shouted that he will kill the victim and by using cricket bat he assaulted the victim on left side of head above ear. Even after co-student took bat from the applicant's possession, he was shouting that he will kill the victim. The result of injury was

skull fracture. Hence, the report lodged against the applicant. The applicant, therefore, filed application under Section 438 of Cr.P.C. before learned Sessions Judge which came to be rejected by order dated 6 June 2023. Aggrieved thereby, the applicant has filed the present anticipatory bail application.

3. Learned Advocate for the applicant submitted that the applicant is student. There was no intention to kill the informant. Due to death of his grandmother, he could not attend custodial interrogation. He is ready to co-operate with investigation. Therefore, custodial interrogation of the applicant is not necessary.

4. Having heard learned Advocate for the applicant and learned APP and also perused the material on record, it appears that due to result of assault by the applicant, the victim sustained grievous injury, he was required to be admitted on 25 April 2023 and was discharged on 2 May 2023. The medical report indicates that victim sustained grievous injury CLW over left parietal temporal region. Statements of witnesses supports the prosecution's case.

5. Learned APP opposed to this application. He submitted that custodial interrogation of the applicant is necessary for taking blood sample and seizure of cloths.

6. According to learned Advocate for the applicant, ingredients of Section 307 are not attracted and therefore, the applicant is entitled to relief under Section 438 of Cr.P.C. The medical report *prima facie* shows grievous injury on head. Whether ingredients of Section 307 are fulfilled or Section 326 is attracted, is the issue which trial Court needs to be adjudicated during trial. However, at

this stage grievous injury on vital part does not entitle the applicant for relief under Section 438 of Cr.P.C.

7. The argument of custodial interrogation can not be considered. In the light of observations made by the Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. ... 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.”

8. In view of aforesaid factors, no case for exercise of power under Section 438 of the Criminal Procedure Code, 1973 is made

out.

9. The anticipatory bail application is, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)