

VRJ

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

ANTICIPATORY BAIL APPLICATION NO.2115 OF 2023

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Mahadev Maruti (Parasu) Desai

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Makrand M. Kale for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.**DATED : JULY 31, 2023****P.C.:**

1. Apprehending arrest in connection with C.R. No.142 of 2023 registered with Shirolu MIDC Police Station for offences punishable under sections 363, 366, 324, 323, 341, 504, 120-B read with section 34 of the Indian Penal Code, 1860, the applicant is seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. The prosecution case in short is as under:

The complainant-Vilas Bapu Patil resident of Yashwant Galli, Bhuye lodged report on 8th June 2023. He is residing with his wife, mother, two daughters, son, his brother and their family members. His brother Pratap is residing separately. His brother Babaso is working in MIDC. The daughter of Babaso who have completed education upto B.Com. She is hereinafter referred as victim girl.

The victim girl used to attend Sadguru Hall for religious meeting. The accused Abhijeet Subhash Dalawi used to visit frequently to the house of the complainant. Out of that visiting terms, the victim girl came in contact with Abhijeet. In October 2022, the parents of Abhijeet had come with proposal of marriage of victim girl and Abhijeet, and that time Babaso had raised objection. The parents of the accused were insisting for said marriage. The accused was also insisting for the same. As there was no matching of Kundali, father of victim girl declined for the marriage. On 7th June 2023 at 07:00 a.m. the complainant and the victim girl proceeded on motorcycle to attend Sadguru Hall. At that time at the outskirts of the village, one person was near one car and he stopped the complainant. Said person removed the motorcycle key. He took out one weapon like sickle. Three persons alighted from the car. The accused was also involved in those persons. Those persons dragged victim girl from motorcycle and took into the car. They all made scuffle with him, assaulted by the weapon on his head. Then those persons fled away with the car. The complainant anyhow reached at home. Then he came to police station. Police sent him for hospital for treatment. The complainant then lodged the complaint about the incident about kidnapping and abduction of the victim girl for purpose of marriage and for other allegations. On this basis report came to be registered.

3. The applicant, therefore, filed an application before the learned Sessions Judge seeking relief under section 438 of the Criminal Procedure Code, 1973. The Sessions Judge rejected the application on 17th July 2023.

4. According to learned advocate for the applicant, he has been falsely implicated. He was not present at the spot when the incident occurred. He is ready to cooperate with the investigation. Custodial interrogation of the applicant is not required.

5. I have perused the case papers and the material on record. The victim in her statement under section 164 indicated that the applicant was accompanying the persons who kidnapped her. The specific roles are attributed to the persons in the car. According to the prosecution, custodial interrogation of the applicant is necessary to identify the applicant and relate the applicant with the role attributed in the first information report. The statement of eye-witness (uncle of the victim) also assigns an active role to the applicant. On prima facie perusal of the material on record, it appears that the victim is alleged to have been kidnapped by using a weapon. It has also come on record that after the initial incident of kidnapping, the applicant alighted from the vehicle and went on to arrange preparation of marriage of the victim with co-accused. Remaining co-accused are already arrested. Therefore, the prosecution has made out a prima facie case.

6. The Apex Court in the case of **Sumitha Pradeep vs. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 has emphasized need of prima facie case by observing thus:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused

in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. 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.”

7. In view of aforesaid circumstances, the anticipatory bail application is rejected.

(AMIT BORKAR, J.)