



Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 2940 OF 2023

Sumit Ambaji Savardekar

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Abhishek Patil i/b Ms. Pooja Patil, for Applicant.

Mr. M. G. Patil, APP for State.

Mr. Fafilal T., API, Borivali Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 23rd OCTOBER, 2023

PC:-

1) Heard the learned counsel for the applicant and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 599 of 2023, registered with Borivali Police Station, for the offences punishable under Sections 328, 509, 323, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant is the mother of the applicant. He is given in to the vice of consuming liquor. The applicant had been allegedly insisting upon the first informant, to stay separately from the applicant and his wife. The first informant refused to move out as she was suffering from Arthritis.

4) On 30th September, 2023, the applicant allegedly raked up a quarrel with the first informant, while in a state of intoxication. The applicant insisted the first informant to reside separately. Upon the first informant's resistance, the applicant allegedly abused the first informant, charged on her person, and pushed her to the ground. The first informant was allegedly assaulted by fist and kick blows. Later on, the applicant rushed to the bathroom and returned with a bottle of phenyl. The applicant allegedly forcibly administered phenyl to the first informant. As she felt giddiness, the first informant approached Shatabdi Hospital. She was admitted, and after getting discharge, the first informant lodged the report.

5) The learned Counsel for the applicant submitted that the first informant has lodged a report with an exaggerated version as there have been frequent quarrels between the first informant and the wife of the applicant. It was submitted that the first informant has been harassing the wife of the applicant

persistently and, therefore, she has lodged a report against the first informant. Attention of the Court was invited to the NC dated 31st August, 2023, lodged by the wife of the applicant against the first informant for the offence punishable under Section 506 of the Penal Code. On 1st September, 2023, also the wife of the applicant had lodged a complaint with the Borivali police station alleging continuous harassment at the hands of the first informant.

6) The learned Counsel further submitted that from the perusal of the medical record maintained at the Shatabdi hospital, it appears that the first informant was in a conscious and well oriented state and her vitals were normal. Therefore, a prima facie case for the offence punishable under Section 328 of the Penal Code cannot be said to have been made out.

7) The learned Counsel made an endeavour to draw home the point that phenyl does not have the toxicity of a poison.

8) In opposition to this, the learned APP stoutly submitted that in the history narrated by the first informant, it was clearly reported that the applicant forcibly administered phenyl to her. Since the first informant is the mother of the applicant and has no place to reside, the applicant does not deserve the exercise of discretion.

9) I find substance in the submission of the learned APP. There is a formidable dyke in the instantaneous narration of history by the first informant before the Medical Officer, where it was specifically reported that the applicant had made her consume the phenyl. The allegations in the FIR thus, prima facie, find support in the medical record.

10) The endeavour of the learned Counsel for the applicant to urge that on account of the strained relations, the first informant has lodged a report with an exaggerated version, does not merit countenance, at this stage. It is true that there is material to show that the wife of the applicant has lodged reports against the first informant. However, at this stage, that constitutes a double edged tool, and furnishes the motive for the alleged offences as well.

11) The second limb of the submission of the learned Counsel for the applicant that phenyl does not have poisonous properties, also does not merit consideration, at this stage. It would be a matter for investigation to ascertain the potency of the substance administered to the first informant, post recovery of the said substance. Moreover, it is imperative to note that Section 328 of the Penal Code covers any stupefying, intoxicating or unwholesome drug apart from the poison. Therefore, the

broad submission that the phenyl does not have properties of poison does not advance the cause of the applicant, at this stage.

12) Moreover, the court cannot loose sight of the fact that the applicant abused, assaulted, and caused hurt to the first informant by administering phenyl in the first informant's house. Intent of the applicant to cause hurt to his mother by administering the substance which falls within the dragnet of Section 328 of the Penal Code is *prima facie* evident. This circumstance, coupled with the relationship between the parties, dissuades the Court from exercising the discretion. In any event, custodial interrogation is warranted to recover the substance, which was allegedly administered to the first informant.

13) I am, therefore, impelled to reject the application.

14) Thus, the following order:-

ORDER

- I) The application stands rejected.
- II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]