

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3283 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Shantanu Sharad Tyagi ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Akshay Cusher, for the Applicant.
Smt. Ashwini Takalkar, APP for the State/Respondent.
IO Y. P. Suryawanshi, Achole Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 30th NOVEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.444 of 2023, registered with Achole Police Station, Mira-Bhayandar, for the offences punishable under Sections 354, 509, 143, 147, 323, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant is a 19 year old girl. On 12th September, 2023 the first informant went to McDonalds at Evershine City, Vasai (East), alongwith her friend Sumeet. The applicant and his friend came thereat and teased the

first informant, while her friend Sumeet had been to washroom. An altercation ensued. The applicant and co-accused assaulted the first informant's friend. First informant went to his rescue. Thereupon, the applicant inappropriately touched the first informant and thereby outraged her modesty. The applicant and the co-accused also committed criminal intimidation. Hence, the report.

4. The learned Counsel for the applicant submitted that the instant FIR has been lodged as a counterblast to the report initially logged by the applicant vide CR No.441 of 2023. The applicant was assaulted by three unknown persons while he was having coffee at McDonalds. He had sustained an injury on face. Thus report was lodged for the offences punishable under Sections 323, 324, 504 and 506, read with Section 34 of the Penal Code.

5. The learned APP submitted that the first informant has reiterated the allegations in the FIR, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973. Specific role of outraging modesty has been attributed to the applicant and, therefore, the applicant does not deserve the exercise of discretion.

6. Evidently, the applicant had lodged report on 13th September, 2023 at about 4.33 am. The medical certificate issued by the IASIS Hospital indicates that the applicant had sustained head injury and a history of assault at the McDonalds was narrated by the applicant. The instant FIR came to be registered on 13th September, 2023 at about 8.50 pm.

7. It further appears that there was a fight between two groups, post an altercation. The applicant had allegedly inappropriately touched the first informant. The question as to whether the applicant had criminal intent or knowledge to outrage the modesty of the first informant in the course of a fight which had ensued between two groups, warrants adjudication at the trial. Since the applicant has reported a version which competes in probability with that of the first informant, and rest of the offences appear to be bailable, I am persuaded to exercise the discretion in favour of the applicant.

8. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.444 of 2023, registered with Achole Police Station, Mira-

Bhayandar, the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

- (ii) The applicant shall cooperate with the investigation and attend Achole Police Station on 7th 8th and 9th December, 2023 in between 10.00 am. to 1.00 pm.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (iv) The applicant shall regularly attend the proceedings before the jurisdictional court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]