



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3292 OF 2023**

Gulshan Arif Tase	...	Applicant
versus		
The State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.4322 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.3292 OF 2023

Salim Rauf Bubere	...	Intervener
and		
Aatif Aarif Tase	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Subhash Jha with Ms. Praveena Venkatraman i/by Law Global Advocates, for Applicant.

Smt. A.A.Takalkar, APP for State.

Mr. Pawan Mali with Mrs. Sunita Warang i/by Mr. Satish Mishra, for Intervener.

Mr. Chaudhari, PSI, Manor Police Station, present.

CORAM	: N.J.JAMADAR, J.
HEARD ON	: 6 DECEMBER 2023
PRONOUNCED ON	: 8 DECEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.329 of 2023 registered with Manor Police Station for the offences punishable under Sections 307, 324, 143, 147, 148, 149 of the Indian Penal Code.
3. At the outset, the objection as to the tenability of the application was

raised as the applicant has not approached the Court of Session. In the application, the applicant has averred that the applicant has directly approached this Court as ABA No.349 of 2023 preferred by the co-accused Rajay Gaikwad came to be rejected by the Court of Session and, therefore, the applicant apprehends that if the applicant approaches the Court of Session, her application would also meet the same fate and, thus, in the peculiar situation and special circumstances, the applicant has approached this Court.

4. Mr. Jha, learned Counsel for the applicant, submitted that though the norm that where two courts have concurrent jurisdiction, a party ought to first approach the Court at the first instance, is well established, yet there is no prohibition in law in directly approaching the High Court for pre-arrest bail under Section 438 of Code of Criminal Procedure, if the circumstances so warrant.

5. Mr. Jha would urge that having regard to the partisan approach of the investigating agency and the manner in which the bail application of the co-accused Rajay Gaikwad, who is an Advocate and represented the applicant, came to be rejected, the applicant has a reasonable apprehension that preferring an application before the Court of Session would turn out to be a futile exercise.

6. To bolster up the submission that, in exceptional cases, the accused can approach the High Court directly and the High Court would be justified in exercising the discretion, Mr. Jha placed reliance on the Full Bench Judgment of the Allahabad

High Court in the case of Ankit Bharti and Ors. V/s. State of U.P. and Ors.¹, a Division Bench judgment of Gauhati High Court in the case of Kwmtagwra Brahma V/s. State of Assam², a decision of the Kerala High Court in the case of Balan V/s. State of Kerala³ and a judgment of this Court in the case of Court in the case of Jagmohan Dalmiya V/s. State of Maharashtra⁴.

7. In my considered view, it is not necessary to elaborately refer to the aforesaid decisions. Section 438 of the Code confers concurrent jurisdiction on the High Court and the Court of Session. The power to grant anticipatory bail is conferred on the higher echelons of the judiciary. Ordinarily, a person apprehending arrest must first approach the Court of Session. However, in special circumstance, which cannot be enumerated in water tight compartments, a person can directly approach the High Court. Undoubtedly, the High Court is not precluded from entertaining an application for pre-arrest bail of a person who has not exhausted his remedy before the Court of Session. It is matter a of discretion to be judiciously exercised by the High Court. Indiscriminate exercise of the jurisdiction to entertain an application for pre-arrest bail directly preferred before the High Court, has the propensity to undermine the sanctity and authority of the Courts of Session, which are manned by competent and experienced judicial officers.

1 2020 SCC Online All 1949

2 (2015) 3 Gauhati Law Reports 453

3 2004 Cri.L.J. 3427

4 Criminal Application No.1158 of 2006 dt. 10 April 2006.

8. In the case at hand, I do not find any special circumstance. It is trite, the entitlement for pre-arrest bail is required to be considered in the light of the material qua each of the applicants. Mere rejection of the application of the co-accused, who is not similarly circumstanced, cannot, by itself, be a ground for entertaining the application directly. From a bare perusal of the FIR, it appears that the first informant has not specifically named the applicant. In contrast, the co-accused Rajay Gaikwad has been specifically named in the FIR and was allegedly a member of the unlawful assembly, in prosecution of the common object of which the offences were allegedly committed. The Court of Session has also adverted to the antecedents of Rajay Gaikwad.

9. I do not find any justifiable reason for the applicant to entertain the apprehension that the Court of Session would not examine the prayer for pre-arrest bail in the light of the role attributed to the applicant, attributes personal to the applicant and the parameters which generally govern the grant of pre-arrest bail.

10. Thus, I am not inclined to entertain the application.

11. Hence, the following order :

ORDER

(i) The application stands disposed with liberty to the applicant to approach the Court of Session at the first instance.

(ii) It is hereby made clear that this Court has not entered into the

merits of the application for pre-arrest bail and all questions are kept open for consideration. In the event the applicant prefers an application for pre-arrest bail, the Court of Session shall decide the same on its own merits and in accordance with law.

(iii) The Interim Application also stands disposed.

(N.J.JAMADAR, J.)