

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.3329 OF 2023**

Dattatray Dhondiba Borhade ...Applicant  
vs.  
The State of Maharashtra ...Respondent

Ms. Latika Belindage for the Applicant  
Ms. Anamika Malhotra, APP, for the Respondent/State.  
Mr. J.S. Girnaz, PSI, Wakad police station.

**CORAM : N. J. JAMADAR, J.**  
**DATE : DECEMBER 4, 2023**

**P.C.:**

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 473 of 2023 registered at Wakad police station for the offences punishable under sections 323, 325, 337, 338, 394, 279, 504 and 506 read with 34 of Indian penal Code, 1860.
3. On 13<sup>th</sup> May, 2023 at about 10.15 pm the applicant had allegedly driven a car bearing number MH-14-CC-3514 in a negligent manner and gave dash to the first informant and caused hurt. When the first informant had been to the Society to inquire and question

as to why he drove the car in such a rash and negligent manner, the applicant and his three associates allegedly abused and insulted the first informant and one of the assailants had given a blow by means of stone on the face of the first informant. He sustained a fracture. He was also robbed of 20 gms gold chain.

4. The learned counsel for the applicant submitted that the applicant was initially granted interim protection by the Court of Session by an order dated 19<sup>th</sup> May, 2023. By a subsequent order dated 22<sup>nd</sup> November, 2023 the application came to be rejected on the ground that custodial interrogation of the applicant is warranted to facilitate the recovery of the gold chain. The learned counsel submits that in the NC, which the first informant had initially lodged, it was not the case of the first informant that he was robbed of the gold chain. It was further submitted that during the intervening period, the applicant had regularly appeared before the investigating officer. Therefore, at this stage, the custodial interrogation of the applicant is not warranted.

5. Evidently, it appears that the genesis of the offences is in a road rage. In the NC which was initially lodged, the first informant had alleged that an altercation ensued over rash and negligent

driving and he was abused and assaulted. He had lost the gold chain in the altercation. Thus, whether there was robbery, as alleged, is a matter for trial as the first informant had initially stated that he had lost the gold chain in the melee. It is trite law that when pre-arrest bail is granted to the accused with a direction to appear before investigating officer, such appearance of the accused before the investigating officer constitutes custody within the meaning of section 27 of the Evidence Act. Therefore, for the alleged recovery of the gold chain, at this length of time, custodial interrogation of the applicant does not seem to be warranted. I am, therefore, persuaded to exercise the discretion in favour of the application.

6. In the event of arrest in C.R. No. 473 of 2023 registered with Wakad police station, the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

7. The applicant shall cooperate with the investigation and attend Wakad police station, on 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> December, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

8. The applicant shall not tamper with the prosecution evidence

and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

9. The applicant shall regularly attend the proceedings before the jurisdictional Court.

10. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

**(N. J. JAMADAR, J.)**