

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APPP) NO.962 OF 2023
(Pramod s/o Kisanrao Diwate and ors. Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.S. Jaiswal, Advocate a/w Shri S.S. Sohoni, Advocate for the
applicants.

Shri M.J. Khan, APP for the non-applicant/State.

Shri M.S. Gupta, Advocate for assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 23, 2023.

Heard.

2. The application is for grant of permission to
assist the prosecution by the original complainant.

3. Considering the reasons mentioned in the
application, permission is granted.

CRIMINAL APPLICATION (ABA) NO.359 OF 2023

2. By this application the applicants are seeking
anticipatory bail in the event of arrest in connection with
Crime No.220/2023 registered at police station
Ganeshpeth, Nagpur City for the offence punishable under
Sections 324, 326, 354, 294, 506 read with Section 34 of
the Indian Penal Code.

3. The applicants are apprehending arrest at the
hands of the police as crime is registered against them on
the basis of report lodged by Mrs. Santoshi Munnalal

Gupta on an allegation that on 25/05/2023 at about 8.30 p.m. her son Shubham has removed his Car from the parking, at the relevant time present applicant No.2 – Dilip Kisanrao Diwate was sitting on the bench near the said car. Said Shubham requested him to move the said bench however, he started abusing him. Applicant No.2 while abusing her son Shubham also assaulted him, therefore, she along with other family members went there. Applicant No.2 further abused her and also outraged her modesty by touching to her chest. At the relevant time, applicant No.1 also came there and intentionally driven his two-wheeler and dashed her, therefore, she sustained injuries. On the basis of said report, police have registered the crime against the present applicants.

4. As per the contention of the present applicants, the alleged incident has taken place on the trifle reason of removing the car from the parking and there was scuffle between both the parties and in that scuffle both the party members have sustained the injuries. It is further the contention of the applicants that as the applicants were assaulted by the informant and her family members they have also approached to the police station and lodged report. Thus, cross-complaints are lodged each other. It is further contention of the applicants that initially there was no allegation regarding the outraging of modesty. Only to create the seriousness of the crime, this false allegation is levelled against the

present applicants. Physical custody is not required, and therefore, they be released on anticipatory bail.

5. Said application is strongly opposed by the State on the ground that the informant has sustained grievous injuries like fracture injury. Applicant No.1 intentionally driven his vehicle and dashed against her due to which she sustained fracture injury. Her son also sustained the bleeding injuries. The common intention of the present applicants can be ascertained from the facts. If they are released on anticipatory bail they would tamper the prosecution evidence and will hamper the investigation.

6. Said application is strongly opposed by the original complainant also seeking permission to assist the Prosecutor and agitated that if the applicants are released on bail there is likelihood of assault by them, and therefore, the application deserves to be rejected.

7. Heard learned Counsel for the applicants. He reiterated the contention and invited my attention towards the initial complaint and submitted that initially there was no allegation regarding outraging of modesty. The application was filed to the police by son of the informant Shubham wherein he has not alleged that the applicants have outraging the modesty of the informant. Thus, the allegation regarding outraging of the modesty is after thought. He further submitted that whatever happened in a heat of passion and custodial interrogation of the present applicants is not required as there no allegation that any weapon is used by any of the

applicants. He further submitted that the applicants would cooperate with the investigation agency and will abide by all the conditions imposed by this court.

8. *Per contra*, learned Additional Public Prosecutor vehemently submitted that the informant as well as her son has sustained bleeding injury. Applicant No.1 Intentionally driven his vehicle rashly and negligently and with intention to cause injury gave dash to her. She has sustained grievous injury like fracture, and therefore, this is not a fit case to grant anticipatory bail to both the applicants. There is allegation against applicant No.2 regarding outraging of the modesty, and therefore, his physical custody is also required.

9. Perused the written submissions of the complainant. Complainant has reiterated the contention that on the day of alleged incident, applicant No.2 has outraged the modesty of the informant as well as the informant and her son were assaulted mercilessly. Applicant No.1 intentionally driven his vehicle and dashed the informant to cause injury, therefore, considering the material collected during the investigation, the application deserves to be rejected.

10. Having heard both the sides and on perusal of the investigation papers it is apparent that the alleged incident has taken place on trifle reason that the son of the informant was removing his car from the parking. It is submitted that he has requested applicant No.2 to remove the bench but he abused him whereas it is contention of

the applicant that said Shubham behaved rudely with applicant No.2, and therefore, alleged incident has taken place. It is further submitted that during scuffle applicants as well as the informant and her son sustained the injuries. Thus, whatever happened is in sudden quarrel.

11. Learned Counsel vehemently submitted that admittedly, there is no allegation that any weapon is used by any of the applicant, therefore, their custodial interrogation is not required.

12. On perusal of the FIR it reveals that there is allegation against applicant No.2 that he abused Shubham as well as he outraged the modesty of the informant. Said Shubham has initially filed an application before the Investigating Officer and narrated about the incident. Admittedly, in the said written application there is no allegation that applicant No.2 has outraged the modesty of the informant. Thus, it is apparent that while lodging the FIR this allegation is made by the informant. Whether it is after thought is a matter of trial. At this stage, I am not inclined to comment on that. On perusal of the investigation papers it reveals that the Investigating Officer has drawn the CCTV footage panchnama. The recitals of the said CCTV footage panchnama shows that accused No.2 - Dilip has driven the vehicle in a rash and negligent manner and intentionally gave a dash to the informant due to which she sustained the injury. The medical certificate is on record which shows that the informant has sustained displaced fracture of right medial

malleolus of tibia with a triangular shaped bony fragment noted along with it. Thus, due to the dash informant has sustained the grievous injury. From the CCTV panchnama it shows that applicant No.1 has not taken due care while driving the vehicle and dashed against the informant intentionally. Considering the allegation against him there is a *prima facie* material against him whereas considering the allegation against applicant Nos.2 and 3 admittedly their custodial interrogation is not required. From perusal of the investigation papers, it appears that the Investigating Officer has recorded the statements of the witnesses which shows the prima facie involvement of the present applicant in the alleged offence. However, considering the role attributed to the applicant Nos.2 and 3 their prayer for grant of anticipatory bail deserves to be allowed whereas considering the role of applicant No.1 his prayer for anticipatory bail deserves to be rejected. Accordingly I pass following order:

- (i) The application is partly allowed.
- (ii) The prayer of applicant No.1 – Pramod s/o Kisanrao Diwate is hereby rejected.
- (iii) The applicant No.2 – Dilip s/o Kisanrao Diwate and applicant No.3 – Kunal s/o Diliprao Gaidhane in the event of arrest in Crime No.220/2023 registered at police station Ganeshpeth, Nagpur City for the offence punishable under Sections 324, 326, 354, 294, 506 read with Section 34 of the

Indian Penal Code, be released on anticipatory bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) each with one solvent surety each in the like amount.

(iv) The applicant No.2 – Dilip s/o Kisanrao Diwate and applicant No.3 – Kunal s/o Diliprao Gaidhane shall attend the concerned Police Station as and when required for the investigation purpose.

(v) The applicant Nos.2 – Dilip s/o Kisanrao Diwate and applicant No.3 – Kunal s/o Diliprao Gaidhane shall furnish their cell phone numbers and address along with address proof.

(vi) The applicant Nos.2 – Dilip s/o Kisanrao Diwate and applicant No.3 – Kunal s/o Diliprao Gaidhane shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(URMILA JOSHI-PHALKE, J.)