

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

CRIMINAL APPLICATION (ABA) NO.367 OF 2023

(Tasawar Khan s/o Taslim Khan 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 U.J. Deshpande, Advocate for the applicant.
Shri M.J. Khan, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 07, 2023.

Heard.

2. Present application is filed by the applicant for grant of anticipatory bail in connection with Crime No.147/2023 registered at police station Murtizapur, District Akola for the offence punishable under Sections 324, 354, 354-D, 365, 504 and 506 read with Section 34 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by the victim on an allegation that she is studying in B.Sc. last year and residing along with her parents and siblings. She is serving in Global English School, Murtizapur. As per the contention in the FIR, she developed love relationship with one Tushar Pradip Sarode, therefore she used to meet him on various occasions. On 17/04/2023, when she was sitting along with said Tushar and her friend Fiza in one Cafe one

person came near to her. Said person used to follow her on several occasions. After seeing him, she immediately boarded in autorickshaw and left that place and came near the station. When she get down from the rickshaw said person restrained her, hold her hand, and asked her why she is roaming with a boy who belongs to the Hindu caste and gave her slap. Said incident was witnessed by several persons as several persons gathered there. He also expressed that whether she would get married with a Hindu boy and outraged her modesty. On the basis of said report, police registered the offence against the present applicant.

4. As per the contention of the present applicant that the FIR is lodged after 10 days. There is no *prima facie* material against the present applicant. The offence under Section 365 of the IPC is not made out. At the most, the offence made out is under Section 323 of the IPC. He has cooperated with the Investigating agency. His custodial interrogation is not required and hence he be released on anticipatory bail in the event of his arrest.

5. Said application is strongly opposed by the State on the ground that the present applicant has attempted to create hatred between two castes. Moreover, the act of the present applicant, holding hand and giving slap at the public place is serious act. It was none of his business to restrain the victim and ask why she is roaming with the Hindu boy. Thus, the act of the present applicant

humiliating and insulting the victim at public place is serious one. Considering the manner in which the alleged act is committed, the anticipatory bail application deserves to be rejected.

6. Heard learned Counsel for the applicant. He submitted that from the recitals of the FIR, offence under Section 365 of the IPC is not made out. As far as the allegation is concerned, the custodial interrogation of the present applicant is not at all required. The alleged incident has taken place on 17/04/2023 whereas the FIR is lodged on 24/04/2023 i.e. also at Chaturshrungi Police Station, Pune. The victim is missing now and her whereabouts are not known. She maybe with her boyfriend. He further contended that from the allegations at the most the offence made out is under Section 323 of the IPC and not more than that. Considering the same, the custodial interrogation of the present applicant is not at all required. Hence he be protected by granting anticipatory bail.

7. In support of his contention he placed reliance on *Siddharth Vs. State of Uttar Pradesh and anr.* (Criminal Appeal No.838 of 2021) Decided on 16/08/2021 wherein the Hon'ble Apex court considered that the personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may

abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused. On the basis of this observation, the learned Counsel submitted that considering the observation by the Hon'ble Apex Court, the liberty of the present applicant is not to be curtailed and he be released on anticipatory bail.

8. *Per Contra*, Shri Khan, learned Additional Public Prosecutor vehemently submitted that the circumstances in which the alleged act is committed by the applicant is to be taken into consideration. The victim and the present applicant has no concerned with each other. In fact, the present applicant has curtailed the liberty of the victim by obstructing her and restraining her. Not only this, he attempted to create the hatred between the two communities. The present applicant not only restrained the victim but also gave her slap at a public place and hold her hand by following her. Thus, thereby committed an offence of stalking as well as outraged the modesty of the victim.

9. The circumstances in which the alleged incident has taken place is to be taken into consideration and the application be rejected.

10. In support of his contention he further placed reliance on ***Sumitha Pradeep Vs. Arun Kumar C K and anr. decided on 21/10/2022*** wherein the Hon'ble Apex Court has considered the considerations for grant of anticipatory bail. In para No.16 it is held by the Hon'ble Apex Court as under :

“16. xxxx.....Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

11. He submitted that merely because custodial interrogation is not required did not entitle the applicant to claim the anticipatory bail and prays for rejection of the application.

12. Having heard both the sides and on perusal of the investigation papers admittedly, the victim has not lodged the report immediately after the incident. Her statement and the recitals of the FIR itself shows that after the incident she immediately gone to Pune and after reaching at Pune she narrated the said incident to her friend which whom she is having love affair and thereafter she has lodged the report. Thus, the delay is explained by her in the FIR. The recitals of the FIR shows that the victim is a student of last year B.Sc. and also serving in one Global English School, Murtizapur. The recitals of the FIR shows that she had love affair with one Tushar Pradip Sarode who belongs to the Hindu caste. She used to meet him, roam with him. On 17/04/2023 also at about 12:30 she had been with her friend and this boy Tushar. At the relevant time, one person came there and was staring at her. Therefore, she immediately left the place along with her friend and boarded in autorickshaw. Said person has followed her. She get down from the autorickshaw in the vicinity of the station. At the relevant time, said person came near to her, restrained her and hold her hand and gave her slap by saying that why she is roaming with the Hindu boy and whether she would get married with the

said Hindu boy. Thus, the incident which narrated by the victim shows that the present applicant has not only restrained her but hold her hand and also slapped her and this incident is witnessed by the persons who gathered there. The Investigating Officer has recorded the relevant statements of the witnesses which supports the contention of the victim regarding the alleged incident. The statement of the witnesses also shows that the present applicant not only followed her but restrained her and gave her slaps at the public place.

13. Learned Counsel for the applicant vehemently submitted that at the most, offence will cover under Section 323 of the IPC. Admittedly, there is no allegation regarding the kidnapping, therefore, the applicability of Section 365 of the IPC is to be considered after the investigation is over.

14. At this stage, the facts that the present applicant followed her, hold her hand and slapped her are substantiated by the recitals of the FIR as well as by the statements of the witnesses. As far as the custodial interrogation of the present applicant is concerned, admittedly nothing is to be recovered from the applicant but as observed by the Hon'ble Apex Court that custodial interrogation is one of the relevant aspect which is to be considered along with the other grounds while deciding the application seeking anticipatory bail. Admittedly, only because the custodial interrogation of the accused is not

required does not mean that the accused to be released on anticipatory bail by protecting him from arrest. If the applicant who has committed the offence by restraining a girl only because she is having love affair with the Hindu boy and asking her why she is roaming with the Hindu boy when it is none of his concern, admittedly is a serious offence.

15. Considering the nature of the events which took place, admittedly this is not a case in which the applicant can be protected by granting anticipatory bail. The applicant has not only curtailed her liberty but also caused harm to her reputation and self esteem. In view of that it is not a fit case wherein the discretion can be used to release the applicant on bail in the event of his arrest. For the above reasons recorded the application deserves to be rejected.

16. Hence the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)