

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 3321 OF 2024

Shahaalam Kalim Pathan

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Manoj Bagal, for Applicant.
- Mr. Bapu V. Holambe Patil, APP for Respondent.
- Mr. S.N. Londhe, ASI, Kurduwadi Police Station.

CORAM : MANISH PITALE, J.

DATE : 11th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicant and the learned APP for respondent – State.

2. The applicant is apprehending arrest in connection with First Information Report No.0378 of 2024, dated 01st October, 2024, registered at Police Station Kurduwadi, District Solapur (Rural), for offences under Sections 132, 115(2), 351(2) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (BNS).

3. The main offence, which is non-bailable in the present case, is the offence under Section 132 of the BNS, which pertains to assault or criminal force to deter public servant from discharge of his duty.

4. In the present case, the informant is an engineer working in the

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construction department of Nagar Parishad Kurduwadi and hence he is a public servant. He has alleged that on the date and time of the incident the named accused person was accompanied by an unknown person. They entered the cabin of the informant and while making allegations against him in respect of certain works, the unknown person started recording a video and thereafter, he caught the informant by his collar and slapped him. This obstructed the informant – public servant from performing his duty, giving rise to registration of the aforesaid offences.

5. The learned counsel for the applicant, at the outset, invited attention of this Court to a disability certificate issued by the District Hospital at Ahmednagar showing that three member committee of Doctors have certified that the applicant has 40% disability and that his left hand is amputated. It is submitted that in such a physical condition it is not possible for the applicant to have carried out the aforesaid assault. It is further submitted that the applicant is not named in the FIR, while the named accused person has been already granted bail by the Competent Court. It is further submitted that the applicant is ready to cooperate with the investigation.

6. On the other hand, the learned APP has referred to the investigation papers, wherein statements of eye witnesses show that they have

described the incident in a manner that is identical to the statement made by the informant, leading to registration of the FIR. It is submitted that therefore, there is enough material to make out a strong *prima facie* case against the applicant.

7. This Court has perused the material on record in the light of the rival submissions. In the first place, the applicant is not named in the FIR. The informant as well as the eye witnesses have stated that an unknown person assaulted the informant while being in the company of the named accused person.

8. The disability certificate placed on record indeed shows that the applicant has 40% disability, as his left hand is amputated. *Prima facie*, such a physical condition would make it very difficult for a person to carry out the assault as alleged by the informant. Additionally, the handicap suffered by the applicant i.e. his left hand being amputated, is a physical feature that would certainly be noticed by the eye witnesses and the informant, but there is no reference to such a physical disability of the applicant, which *prima facie* makes it little surprising that this feature has not been highlighted by any of the witnesses or the informant.

9. In any case, the nature of assault does not warrant custody for recovery of any weapon and therefore, this Court is inclined to grant relief to

the applicant.

10. The application is allowed in the following terms:

- (A) In the event the applicant is arrested in connection with FIR No.0378 of 2024, dated 01st October, 2024, registered at Police Station Kurduwadi, District Solapur (Rural), he shall be released on bail, on furnishing PR Bond of ₹ 25,000/- with one or two sureties each in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall remain present before the Investigating Officer on 13th December, 2024, between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicant shall cooperate with the investigation.
- (D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

12. It is also clarified that the observations made in this order are

limited to the question of grant of anticipatory bail to the applicant in the present application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

13. The application is disposed of.

(MANISH PITALE, J.)