

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

ANTICIPATORY BAIL APPLICATION NO.215 OF 2024

Mohd. Zia Azmat Jamal Sayyed Applicant

versus

State of Maharashtra Respondent

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- Mr. Ashok Mundargi, Senior Advocate a/w Abhishek Kulkarni a/w Sagar Wakale, Advocate for Applicant.
- Smt. M. H. Mhatre, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.251/2023, dated 10/11/2023, registered with Rabodi Police Station, Thane City, under sections 324, 342, 504 of the Indian Penal Code. Subsequently, section 308 of the Indian Penal Code is added.

2. Heard Mr. Ashok Mundargi, learned Senior Counsel for the Applicant and Smt. M. H. Mhatre, learned APP for the State.

3. The FIR is lodged by the Applicant's wife. She has stated that she was working in a company as a Senior Executive. She got married with the Applicant in the year 2017. It was a love marriage. Both of them belonged to different religions. Therefore, there was opposition from their families. They did not disclose about their marriage to anybody and were residing with their respective families. Finally from 20/10/2023, the informant started residing with the Applicant at Rabodi, Thane. Since then there used to be some petty quarrels between husband and wife. On 08/11/2023 suddenly in the evening at around 08.00 p.m. when they were discussing their financial condition, the Applicant got angry and assaulted her. He caught her neck and pushed her. It is alleged that he assaulted her with his belt on her legs, hands and back. He took her mobile and went outside the bedroom. He locked the bedroom from outside. The informant panicked and out of the fear jumped from the balcony of their first floor house. She fell down on the road. The other people gathered there and arranged a Rikshaw for her. She

went to her parent's house. Thereafter she went to the hospital and lodged her FIR.

4. Learned Senior Counsel for the Applicant submitted that the acts of the Applicant at the highest are restricted to causing simple injuries. Therefore the offence does not transfer beyond section 323 of IPC. The act at the highest may attract section 323 of the IPC. The FIR is lodged on 10/11/2023. After about a month on 05/01/2024, the investigating agency made application before the Metropolitan Magistrate and applied section 308 of IPC. He submitted that it was a petty quarrel and the informant entertained fear unnecessarily. He submitted that a small reception was arranged on 05/11/2023 and the incident had occurred within 3 days. The Applicant is a lawyer and he has no criminal antecedents. He had no intention to cause hurt to the informant. He submitted that as of today both of them are on cordial relations and they regularly exchange messages on WhatsApp. He submitted that in this background, the Applicant's custodial interrogation is not necessary.

5. Learned APP opposed these submissions. She submitted that section 308 of IPC is properly applied. She relied on the medical certificate of the informant. She submitted that the informant had suffered fracture of her lower back and therefore the offence was serious. She submitted that some serious conditions be imposed on the Applicant so that the informant is safe.

6. I have considered these submissions. The medical certificate shows that the informant had suffered abrasion over right bicep, abrasion over right cheek and suffered pain at the heel. Therefore, the allegations that the Applicant had assaulted the informant with belt, appear to be little exaggerated. As far as the injury to the back is concerned, it was caused because the informant had jumped from some height. It is not directly attributed to the Applicant's act. The Applicant's role was restricted to assaulting the informant and causing two abrasions; one on bicep and the other on the right cheek. Therefore, the

Applicant's role is not extended to causing fracture of the lower back. The Applicant cannot be directly attributed the role of causing fracture to the informant's back. It is extremely doubtful whether section 308 of the IPC can be attributed to the present Applicant in view of the act alleged against him. The Applicant has no criminal antecedents. He is an advocate. He can be put to certain terms. His custodial interrogation is not necessary. But it is necessary to see that the informant is safe. Therefore, some conditions can be imposed on him.

7. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.251/2023, dated 10/11/2023, registered with Rabodi Police Station, Thane City, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall not cause any harassment to the informant. The Applicant shall not enter the housing society where the informant is residing with her parents. The Applicant shall not visit the informant at her work place.
- (iii) The Applicant shall attend the concerned Police Station every Monday and Thursday between 06.00 to 07.00 p.m. for a period of three months.
- (iv) The prosecution is at liberty to make an application for cancellation of this order if any of these conditions is breached.
- (v) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)