

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

CR. ANTICIPATORY BAIL APPLICATION NO. 339 OF 2024

Nazim Hashim Yete

...Applicant

Versus

The State Of Maharashtra

...Respondent

Adv. Niranjan Mundargi i/b. Adv. Grishma Lad, Adv. K. Mehta, Adv. Aishwarya Bapat, Adv. Swati Mishra for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J

DATED : 6th FEBRUARY, 2024

P.C.:

1. The Applicant is seeking anticipatory bail in connection with C. R. No. 17 of 2024 registered at Mira Road Police Station, dated 17/01/2024 u/s. 363, 323 r/w. 34 of the Indian Penal Code.
2. Heard Mr. Mundargi, learned counsel for the Applicant and Ms. Ganapathy, learned APP for the Respondent-State.
3. The FIR is lodged by the Applicant's earlier wife. She has stated that they had a son. The informant had re-married but the Applicant and the informant's son was staying with the informant. There is a civil proceeding pending before the Court in Thane vide MA No. 299/2022. The custody of the son was with the informant and the Applicant was given permission to interact with child through a video call. On 17/01/2023, the Applicant stopped their son, who was being

taken to the informant's house on a two-wheeler by the informant's driver. The Applicant took away his son. In that process he alongwith his companion assaulted the driver. The Applicant took away his son with him. This incident happened near a petrol pump in Mira Road. On this basis, the FIR is lodged.

4. The FIR is lodged u/s 363, 323 r/w. 34 of the IPC. Learned Counsel for the Applicant submitted that all these offences in this case are bailable and since Applicant's anticipatory bail application is rejected by the Sessions Court, the Applicant had reasonable apprehension of being arrested. He submitted that the Applicant has no intention to evade the due process of law. The Applicant shall participate in the proceedings before the Court at Thane. He submitted that the proceedings are initiated by the Applicant himself but only since he was apprehending arrest, he could not attend the Court proceedings in Thane. He submitted that he is willing to provide his residential address and all the details for service of any Court proceedings. He submitted that the custodial interrogation of the Applicant is not necessary as it is an admitted fact that the Applicant has taken away his own son. The question of the custody of the son can be considered by the Civil Court in Thane.

5. Learned APP conceded that the offences mentioned in the FIR

are bailable. She submitted that the Applicant needs to provide his proof of address. She submitted that the manner in which the son was taken away by the Applicant shows that it was not lawful.

6. I have considered these submissions.

7. Since the offences are bailable, in the event of Applicant's arrest, he will have to be released on bail. At the same time, the manner in which the son was taken away can also not be ignored. However, ultimately this will have to be taken into consideration by the Civil Court before which the litigation for custody is pending. Today, I am only considering the application for anticipatory bail. In view of this discussion, the order for anticipatory bail can be passed in the Applicant's favour. However, the applicant will have to co-operate with the investigation. As submitted by learned Counsel for the Applicant, he will participate in the legal proceedings before the competent Court for the custody of the child. He is required to give his residential address and all the details so that he is reachable for the service of Court proceedings. That way the informant's interest can also be safeguarded to a certain extent.

8. Hence, the following order:

ORDER

(i) In the event of his arrest in connection with with C. R. No.

17 of 2024 registered at Mira Road Police Station, the Applicant is directed to be released on bail on his furnishing P. R. 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 furnish details of his residential address, mobile number and any other contact number, which would be relevant. The Applicant shall make himself available for the investigation purpose whenever required by the police. The Applicant shall participate in the legal proceedings for custody of the child.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)