

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

ANTICIPATORY BAIL APPLICATION NO. 1008 OF 2024

Arbaj @ Sonu Raju Shaikh	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Ranjeet M. Pawar for Applicant.
Mr. Avinash A. Naik, APP for State/Respondent.
Mr. Aabad Ponda, Sr. Advocate as *Amicus Curiae*.

**CORAM :- SARANG V. KOTWAL, J.
DATE :- 15 APRIL 2024**

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.136 of 2023 registered at Malegaon Police Station, Pune Rural, on 03.04.2023, under Sections 326, 323, 504 and 506 r/w. 34 of the Indian Penal Code. Subsequently, Section 307 of the I.P.C. was applied. Apart from that, Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is also applied. However, in the facts of this case, Section 15 of the Juvenile Justice Act may not be applicable.

2. Heard Mr. Ranjeet Pawar, learned counsel for the

applicant and Mr. Avinash Naik, learned APP for the State.

3. The F.I.R. is lodged by one Vedant Jagtap, who was 15 years of age. He has stated that, he was residing with his family consisting of his parents and brother. His father was a labourer. He was studying in the 8th standard. The present applicant and one Sohail Shaikh were his friends. On 31.03.2023, at about 4:30p.m. the present applicant called him near a canal at Malegaon. The informant went there at 5:30p.m. The applicant along with one Kiran Lakde were present there. They asked the informant as to why he had told others about some injection containing intoxicating drugs. The informant denied of having told anybody about it. Kiran picked up a wooden stick and gave blows on the informant's left hand and leg. One Tejas assaulted him with belt on his back. He also assaulted with stone on the informant's back. The applicant assaulted him with kicks and fist blows. After that the informant was taken to Palthi Mori. The applicant called Sohail and asked him to reach there. Even Sohail was asked about the same thing and he was also assaulted by all the accused with stick, belt and stone. After that they went away. On this basis the F.I.R.

was lodged.

4. The F.I.R. was lodged U/s.326 of the I.P.C. mainly. Subsequently, the informant's supplementary statement was recorded on 05.04.2023. He added that, after he was beaten, he was assaulted. He was thrown in the water in the canal. The accused were aware that the informant could not swim. The informant caught one bush and somehow survived. He came out with the help of that bush. After that, he was taken to Palthi Mori and then the second part of the incident took place. Based on this supplementary statement, Section 307 of the I.P.C. was added. The record shows that the applicant was not available. The investigation was carried out and the charge-sheet was filed. The investigating agency has mentioned that the charge-sheet was filed on 01.07.2023 vide the Charge-sheet No.88 of 2023 in the court of J.M.F.C., Baramati. It was specifically mentioned that the applicant was absconding and, therefore, the charge-sheet was filed against him U/s.299 of the Cr.p.c. It was further mentioned that, once he was found, he would be arrested and the supplementary charge-sheet would be filed against him.

5. Learned counsel for the applicant submitted that, in this case the investigation is over. The incident is almost one year old. It had taken place on 31.03.2023. The applicant had not used any weapon, therefore, the applicant's role can be separated. After one year, the applicant's custody is not necessary. The applicant is a twenty year old boy. He is taking education and, therefore, some leniency be shown to him by protecting him U/s.438 of the Cr.p.c.

6. Learned APP relied on the statement of the informant, his supplementary statement, statement of the other victim Sohail Shaikh and the medical papers to oppose this application.

7. Before discussing merits of the matter, it is necessary to refer to a wrong practice consistently followed by the police officers in many cases. It is a common experience of this Court that in many cases where the accused are absconding, the police officers file the charge-sheet against him by specifically mentioning that the charge-sheet was filed U/s.299 of the Cr.p.c. This has been happening in many cases and, therefore, I deem it necessary to make certain observations about this wrong practice.

8. The learned Senior Counsel Mr. Ponda is present in the Court and, therefore, I requested him to assist this Court on this aspect. He submitted that the practice followed by the investigating agency is completely illegal. He submitted that a Division Bench of this Court at Aurangabad bench had also commented on this practice and had expressed that, Section 299 of the Cr.p.c. did not empower the investigating agency to file the charge-sheet under that section. Shri. Ponda relied on the Judgment of the Division Bench of this Court at Aurangabad bench in the case of *Sajjan s/o Hirchand Gusinge Versus The State of Maharashtra & Anr*¹. In particular, he relied on the observations made in paragraph-12 of that Judgment.

9. Section 299 of the Cr.p.c. reads thus:

“Section 299 - Record of evidence in absence of accused-

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if

1 Criminal Appeal No.869 of 2022 : Decided on 08.02.2023.

the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

10. The relevant observations of the Division Bench in paragraph-12 of the Judgment in *Sajjan's case (supra)* are as follows:

“12. Another fact which will have to be mentioned here that when the charge-sheet is filed, it was stated to be under Section 299 of the Code of Criminal Procedure against the appellant. Time and again this Court has observed that Section 299 of the Code of Criminal Procedure is an enabling section, which enables the Court to record the evidence against an absconding accused. It does not empower the investigating agency to file charge-sheet under that Section. It will have to be shown by the investigating officer that there were efforts to arrest the concerned accused. Before considering an accused as absconding, the procedure as contemplated under Section 82 of the Code of Criminal Procedure will have to be undergone.....”

11. I am in respectful agreement with these observations. Section 299 of the Cr.p.c. is meant for a completely different purpose and as observed by the Division bench, it does not empower the investigating agency to file the charge-sheet. In spite of this clear observations of the Division Bench made way back in February 2023, this wrong practice is still being followed which needs to be stopped immediately. Therefore, I am inclined to issue directions to circulate this order, as well as, the order passed in the case of *Sajjan Gusinge (supra)* to the superior police officers for instructing the police officers to follow these directions.

12. Coming back to the merits of the present matter, the injury certificate and the medical papers show that the informant had suffered fracture of his left forearm and fracture of base of the 5th metatarsal bone. There was serious injury to the left shoulder, as well. Thus, Section 326 of the I.P.C. is clearly made out. I do not find force in the submissions that the applicant's role can be separated. The applicant himself had called the informant at that spot and, thereafter, Sohail Shaikh was called at different spot. Both of them were assaulted. The other accused were already

present at the spot and, therefore, considering the actual role played by the applicant, Section 34 of the I.P.C. is also applicable. Apart from that, there are further allegations that the informant was thrown in a canal, though, the accused were aware that he could not swim. The informant himself was a 15 year old boy who had suffered serious injuries at the hands of the accused. The applicant cannot take advantage of his own wrong by remaining absconding till the charge-sheet is filed. In this view of the matter, no case for grant of anticipatory bail to the applicant U/s.438 of the Cr.p.c. is made out. The application is rejected.

13. The Registry is directed to circulate a copy of this order, as well as, the copy of the Judgment passed by the Division Bench of this Court at Aurangabad bench, in the case of ***Sajjan Gusinge (supra)***; with specific reference to paragraph-12 of the said Judgment, to all the Superintendents of Police of all the Districts in the State of Maharashtra, as well as, to all the Commissioners of Police in Police Commissionerate area in the State of Maharashtra.

(SARANG V. KOTWAL, J.)