

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

ANTICIPATORY BAIL APPLICATION NO. 1171 OF 2024

Baban Undrya Kathara

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Aniket Vagal a/w. Divesh Mehani, Kunal N. Pednekar and
Savvy Kolhekar for Applicant.

Mr. Nitin B. Patil, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 29 APRIL 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.54 of 2024 registered at Khandeshwar Police Station, Navi Mumbai, on 02.03.2024, under Sections 370(5), 324, 504 and 506 of the Indian Penal Code and under Sections 16, 17 and 18 of The Bonded Labour System (Abolition) Act, 1976.

2. Heard Mr. Aniket Vagal, learned counsel for the applicant and Mr. Nitin Patil, learned APP for the State.

3. The F.I.R. is lodged by one Dattu Hiram. He has stated that his native place is Murambi, Post. Vadiware, Taluka Igatpuri,

District Nashik. He was working on the brick kiln of the present applicant at Nevali, Taluka Parnali, District Raigad. His family consists of his wife and two children. Before he started working for the applicant, he was given Rs.10000/- by the applicant as an advance. The F.I.R. mentions that, from time to time, the applicant had given him Rs.29,500/- as financial help, but in lieu of that the applicant used to force him to do rigorous labour work. The informant and his wife used to wake up at 4:00a.m. and then come to the applicant's brick kiln. They worked till 11:00a.m. in the morning. After that there was recess for lunch and then again the work went on till 6:00p.m. After that the informant used to come back to his hut.

4. On 01.03.2024, the informant was suffering from chest pain and he was not in a good health condition. Therefore, he did not attend his work on the brick kiln. At 6:30p.m. he was standing near the hut of one Vijay Wagh. At that time the applicant came there carrying handle of a spade. He questioned the informant as to why he did not attend the duty. The applicant abused the informant and assaulted him on his left shoulder, left side of the

ribcage and on the head. The applicant threatened that he would set the informant's hut on fire and that he would kill the informant. The F.I.R. mentions that the informant suffered serious injuries including a bleeding head injury. After that, his cousin informed one Ramdas Wagh. Then the informant was taken to Khandeshwar police station. The police sent him to Panvel Government Dispensary. He was given the medical treatment and then he lodged this F.I.R.

5. Learned counsel for the applicant submitted that, except Section 370 of the I.P.C., all the other offences are bailable. According to him, the offence does not fall within the meaning of Section 370 of the I.P.C. There was neither exploitation, nor threatening nor force on the part of the applicant. He submitted that the applicant's custodial interrogation is not necessary. He can be made to face the prosecution. The applicant is 73 years of age, therefore, the age factor should be taken into consideration.

6. Learned APP produced the investigation papers before the Court. He submitted that, there are serious injuries which are

reflected in the injury certificate. There are statements of the eye witnesses. Therefore, considering the manner in which the informant was assaulted, the applicant does not deserve any leniency and protection from arrest under section 438 of the Cr.p.c.

7. I have considered these submissions. The informant had suffered four wounds. The first is contused lacerated wound on the left side of the head on the frontal region of the size 5cm x 2cm x 2cm with heavy bleeding. It was caused by hard and blunt object. A CT scan of the brain was advised. The second injury was contused lacerated wound on the left side of the chest on the lateral side. It was of the size of 4cm x 1cm x 1cm. Dried blood was present. It was caused by hard and blunt object. X-ray for the chest was advised. There was an abrasion on the left shoulder joint of the size 3cm x ½cm. It was described as a simple injury. The fourth injury was abrasion on the left side of the left elbow joint of the size of 2cm x 1/2cm. It was also described as a simple injury. Thus, first two injuries were quite serious.

8. Considering the nature of the head injury of the size 5cm x 2cm x 2cm with heavy bleeding, the offence U/s.307 of the I.P.C. may be attracted, though, the investigating agency has, so far, not applied that section. The other possibility is that, considering the nature of injury on the head, it was an injury which would be endangering life and, therefore, that injury may attract the provisions of Section 326 r/w. 320 of the I.P.C. There are eye witnesses to the incident namely Vijay Wagh, Kamal Wagh, Yashoda Gaikwad and the informant's wife Savita. All these statements are consistent. The ingredients of Section 370 of the I.P.C. are clearly made out. It was nothing but exploitation. For that purpose the applicant had harassed the informant and his wife. He had used threats, he had used force; in fact, he had assaulted the informant. The F.I.R. mentions that, by extending some advance, the applicant was forcing the informant and his wife to do rigorous labour work for long hours and, this is nothing but exploitation. It is quite clear that the applicant who was financially well off than the poor informant, this assault was mounted on the informant displaying total insensitivity. No sympathy can be shown to the

applicant.

9. Considering all these aspects, no case of grant of anticipatory bail U/s.438 of the Cr.p.c. is made out.

10. The application is rejected.

(SARANG V. KOTWAL, J.)