

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

ANTICIPATORY BAIL APPLICATION NO. 1304 OF 2024

Feroz Anwar Shaikh @ Feroz Anwar Khan

Inamdar ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Mahendra N. Sandhyanshiv i/by N. R. Bubna for Applicant.

Mr. Mayur S. Sonavane, APP for Respondent-State.

Mr. Santosh Kadu Bahakar, PSI, Nandgaon Police Station, Nashik (Rural).

CORAM: MANISH PITALE, J.

DATE : 23rd SEPTEMBER 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0423 of 2023 dated 30th September 2023 registered at Nandgaon Police Station, Dist. Nashik, for offences under Sections 324, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860 (IPC).

3. This is a case where initially the Investigating Authority proceeded against the applicant, *inter alia*, for offence under Section 326 of the IPC, for having caused grievous injury to the victim. The applicant and the co-accused person, both were granted regular bail by order dated 13th October 2023 passed by the Sessions Court.

4. The incident in the present case occurred on 29th September 2023. Subsequently, on 20th December 2023, the informant/victim expired and offences under Sections 302 and 307 of the IPC were added. The charge-sheet was filed on 30th March 2024 for offences under Sections 302, 307, 326, 324, 323, 504 and 506 read with 34 of the IPC.

5. It appears that after the offences under Section 302 and 307 were added, the Investigating Authority has been seeking physical custody of the applicant.

6. The learned counsel for the applicant submits that this Court may consider granting anticipatory bail and appropriate conditions may be imposed, as no purpose would be served by taking the applicant back into the custody, despite the fact that while granting regular bail by order dated 13th October 2023, the Sessions Court had recorded that the weapon of assault i.e. iron rod was already recovered. It was further submitted that the statements of the informant would indicate that no injury was caused on the head, at the time of the incident, while the postmortem report indicates the cause of death as injury to the parietal region of the head of the informant/victim.

7. The learned APP has opposed the present application. He submits that the applicant is now facing prosecution for serious offence under Section 302 of the IPC. It is submitted that therefore, this Court may not show any indulgence to the

applicant, particularly because the applicant is absconding despite the Magistrate having directed the applicant to surrender within 5 days.

8. Having heard the learned counsel for the applicant and the learned APP, this Court is inclined to allow the present application for the following reasons :

- (a) The applicant was already released on regular bail on 13th October 2023, when the offence under Section 302 was yet to be added and in the said order, it was specifically observed that the weapon of assault i.e. iron rod was already recovered.
- (b) There is nothing to show that the applicant violated any of the conditions on which regular bail was granted.
- (c) The informant/victim in the present case died on 20th December 2023 i.e. about 3 months after the date of the incident.
- (d) Even as per the statement of the informant, leading to registration of the FIR and his subsequent statement recorded on 30th October 2023, the informant had alleged that injuries were caused to his leg, back and abdomen. Even the informant/victim did not allege any injury to his head.
- (e) Therefore, the cause of death recorded in the postmortem

report becomes crucial, as it records the cause of death as injury to the parietal region of the head of the informant.

- (f) The injury certificate on record shows that there was a grievous injury and fracture caused to the leg of the informant.
- (g) No purpose would be served by taking the physical custody of the applicant again, when he was granted regular bail as far back as on 13th October 2023, only on the ground that due to the death of the informant on 20th December 2023 i.e. about 3 months after the date of the incident, offence under Section 302 of the IPC was added.
- (h) The learned APP indicated that after regular bail was granted to the applicant an FIR has been registered for offence under Sections 354 and 354(a) of the IPC and also under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) against the applicant. But, registration of the aforesaid subsequent FIR in itself cannot be a ground to deny relief to the applicant in the present case. Appropriate conditions can be imposed on the applicant to ensure his availability during the course of the trial.

9. In view of the above, the application is allowed in the following terms :

(a) In the event the applicant is arrested in connection with FIR No. 0423 of 2023 dated 30th September 2023 registered at Nandgaon Police Station, Dist. Nashik, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount.

(b) The applicant shall cooperate with the investigation, as this Court is informed that supplementary charge-sheet is intended to be filed within 3 to 4 weeks.

(c) The applicant shall report to the Nandgaon Police Station, Dist. Nashik on the first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.

(d) The applicant shall not enter the jurisdiction of the said Police Station, except for abiding by condition (c).

(e) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

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

11. The application is disposed of.

MANISH PITALE, J.