

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

ANTICIPATORY BAIL APPLICATION NO. 1630 OF 2024

Smita Tushar Hande	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Aabad Ponda, Senior Advocate, i/by Vaibhav Ugle a/w Mayur Lodha, Vikas Somawanshi, Shubham Vasekar and Roshan Chavan for the Applicant.

Ms. Megha S. Bajoria, APP for Respondent-State.

Mr. Aniruddha M. Sawarde, PSI, Wakad Police Station, Pimpri-Chinchwad.

CORAM: MANISH PITALE, J.
DATE : 24th JUNE 2024

P.C. :

. Heard learned Senior Counsel for the applicant and learned APP for respondent-State.

2. The applicant has approached this Court apprehending arrest in connection with FIR No. 0084 of 2024 dated 27th January 2024 registered at Wakad Police Station, Pimpri-Chinchwad, for offences under Sections 364, 302, 201, 143, 145, 148 and 149 of the Indian Penal Code, 1860 (IPC).

3. The FIR was initially registered against named accused No.1, who is said to be the brother of the applicant and 4 to 5 are unknown persons. As per the statement of the informant, on the

date of the incident i.e. 26th January 2024, her husband had left the house mentioning about certain work to be undertaken. The husband of the informant was a painter-cum-contractor for civil works. In the statement leading to the registration of the FIR, the informant stated that she subsequently received call from the mobile number of her husband, where he stated that amounts were to be urgently arranged as there were certain persons demanding money from him. On this basis, she started taking steps for arranging the amount of Rs.50,000/-. At this point, one Santoshkumar Bharti, another Contractor and a friend of the informant's husband told her that certain persons had arrived in two cars when Santoshkumar Bharti was with the husband of the informant and that they had demanded certain amount from the husband of the informant, abusing him in the process and that he had noted the number of one of the cars. He also indicated to her that the amount will have to be arranged. The informant further stated that thereafter, at about at 2:00p.m. to 3:00 p.m. in the afternoon, she received a call informing her that her husband was admitted in the hospital. When she went there, she was told her husband was brought dead. On the basis of the said statement, the FIR came to be registered.

4. The learned Senior Counsel appearing for the applicant submits that although the offences in the present case are serious, including offence under Section 302 of the IPC, that itself cannot be a ground for non consideration of the application for granting

of anticipatory bail. It is emphasized that as per the settled position of law, the alleged role of the applicant accused is to be appreciated in order to consider such an application on its own merits. He invited the attention of this Court to the aforesaid statement leading to the registration of the FIR and the supplementary statement of the informant recorded two days later i.e. on 28th January 2024, indicating the improvements made by the informant, thereby, for the first time taking the name of the applicant before this Court. Thereafter, attention of this Court was invited to the statement of the said Santoshkumar Bharti recorded on 27th January 2024, during the course of the investigation, indicating substantial improvements made therein and after inviting attention of this Court to the statement of the said witness recorded under Section 164 of Code of Criminal Procedure, 1973 (Cr.P.C.), contradictions therein were highlighted.

5. It was submitted that the manner in which the said witness had described the incident in the two statements creates serious doubt about the very presence of the applicant at the spot of the incident and that in any case, even as per the said witness, the applicant is said to have questioned the assailants and thereafter, she left the place of the incident. It is submitted that therefore, this Court may consider the present application favourably, particularly because the applicant undertakes to cooperate with the investigation.

6. The learned APP vehemently opposed the present application, contending that the FIR was not supposed to be an encyclopedia and that the supplementary statement of the informant, as well as the statement of the said Santoshkumar Bharti, also clearly bring out the role of the applicant. The motive with which the applicant acted is also evident from the material presently available on record and that no case is made out for granting relief of anticipatory bail. It is brought to the notice of this Court that the husband of the applicant, who is also a co-accused, is absconding and considering the role attributed to the applicant, this Court may dismiss the present application.

7. This Court is of the opinion that the seriousness of the offences registered against the applicant cannot be the basis for not considering the prayer for anticipatory bail. The role of the applicant accused has to be appreciated on the basis of the material brought to the notice of this Court, so as to come to the conclusion as to whether a case for grant of anticipatory bail is made out.

8. In the instant case, in the statement of the informant which led to registration of the FIR on 26th January 2024, does not name the applicant at any place. The said statement shows that the informant suspected foul play in the backdrop of the information given by the said Santoshkumar Bharti to her, when certain phone calls were received from the mobile number of the husband of the

informant i.e. the victim about amount being demanded and the urgency of arranging for such amount.

9. In the statement of the said Santoshkumar Bharti recorded on the next date of the incident i.e. 27th January 2024, the incident in question is described in detail and in the said statement, the applicant is specifically named. It is stated that the applicant arrived in one of the cars at the place of the incident and the male persons accompanying her hurled abuses on the victim and started violently assaulting him with their hands and also by using a wooden bamboo. It is alleged that when the said witness intended to intervene, the applicant waived at him and told him to leave. It is then stated that the said witness left the place of the incident and informed the informant about the manner in which the incident had taken place.

10. This Court takes note of the fact that in the statement given by the informant, on the basis of which the FIR was registered, there is no reference to the said Santoshkumar Bharti having described the incident to her when he informed her as to what had happened to her husband when the said witness and her husband were together. It is relevant to note that subsequently, when the statement of the said witness Santoshkumar Bharti was recorded under Section 164 of the Cr.P.C. on 17th February 2024 before the Magistrate, a completely different picture was portrayed. It is specifically stated that 4 to 5 persons arrived at the spot of the

incident in two cars. The applicant allegedly arrived at the spot of the incident as a pillion rider with a person on a motorcycle. It is stated that when the assault was launched by the persons, who had arrived in the two cars, the applicant had raised question as to why the victim was being assaulted, but she was told not to intervene and therefore, the applicant left the spot of the incident.

11. This Court finds that there is variance in the manner in which the incident is described by the said Santoshkumar Bharti, who claims to be an eyewitness. He omitted informing the informant about the details of the incident when he met her after the incident and there is a glaring difference between the role ascribed to her in a statement recorded under Section 161 of the Cr.P.C. on 27th January 2024, as compared to his statement before the Magistrate recorded under Section 164 of the Cr.P.C. on 17th February 2024.

12. It is emphasized by the learned APP that there are call detail records available, which show the presence of the applicant at the spot of the incident and it is further emphasized that the applicant certainly had a motive for inflicting violence on the victim, for the reason that she was to recover certain amount from the victim.

13. In the first instance, there is no reference to the applicant in the statement of the informant. The involvement of the applicant, for the first time, is stated by the Santoshkumar Bharti, who is

claiming to be an eyewitness. But, the aforesaid discrepancies in his statements and the role ascribed to the applicant in the statement of the said alleged eyewitness recorded on 17th February 2024, given an impression to this Court that even if it is to be assumed that the applicant had a role to play, there is nothing to indicate that she inflicted any violence on the victim and that in any case, the only eyewitness to the incident stated before the Magistrate that it was the applicant who questioned such violence being inflicted, upon which the co-accused persons told her not to interfere and thereafter, she left the place of the incident. The manner in which the applicant arrived at the place of the incident is also stated in a different manner in the two statements of the said eyewitness, further indicating a strong *prima facie* case in her favour. Merely because the husband of the applicant is absconding, cannot be a ground to insist upon custodial interrogation of the applicant, as long as she is willing to cooperate with the investigation.

14. 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. 0084 of 2024 dated 27th January 2024 registered at Wakad Police Station, Pimpri-Chinchwad, she shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount

to the satisfaction of the trial Court.

(b) The applicant shall remain present before the Investigating Officer on 26th and 27th June 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer. The applicant shall cooperate with the Investigating Officer during the course of investigation.

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

15. 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.

16. The application is disposed of.

MANISH PITALE, J.