

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Anticipatory Bail Application No.1682 of 2024**

Abdul Mateen Abdul Rashid Pathan
An adult, aged about 45 years,
Residing at Room No.8,
Bldg No.11, LIG Colony, Vinoba
Bhave Nagar, Opp.Al Falah School,
Kurla(West) Mumbai-400 070

... Applicant

v/s.

1. The State of Maharashtra
(At the instance of Vinoba Bhave
Nagar Police Station)

2. XYZ

... Respondent.

Mr Amit Katarnaware, for the Applicant.
Mr CD Mali, APP for the Respondent/ State.
API Gawade, VB Nagar Police Station is present.
Complainant is present in-person.⁷

Coram: R.N. Laddha, J.
Date: 1 July 2024

P.C. :

Heard Mr Amit Katarnaware, the learned for the applicant
and CD Mali, the learned Additional Public Prosecutor for the
State.

2. A First Information Report bearing No.57 of 2024 dated 29
February 2024, came to be registered with the Vinoba Bhave Nagar
Police Station, Mumbai, against the applicant for the offences

punishable under Sections 341, 342, 323, 506 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012. By this application, the applicant seeks pre-arrest bail. Initially, the applicant approached the Sessions Court seeking anticipatory bail but was denied.

3. Mr Amit Katarnaware, the learned Counsel appearing for the applicant, contends that the allegations against the applicant in the FIR lack merit and are baseless. The applicant has not committed any offence, let alone the alleged one. In cases like this, custodial interrogation is unnecessary since there is nothing to recover from the applicant. Further, the learned Counsel asserts that the applicant has become a target of developers due to exposing their various illegal activities. The medical record does not support the allegations. The incident occurred in a crowded area, and no individual witnessed it. Additionally, the applicant is willing to cooperate with the investigation.

4. On the other hand, Mr CD Mali, the learned Additional Public Prosecutor, argues that the applicant committed sexual assault on the minor victim. The ongoing investigation is at a nascent stage. Although the medical records indicate the victim's reluctance to undergo genital examination, they also reveal the injuries on the victim's body. Moreover, there are allegations that

the applicant physically restrained and assaulted the victim, leading to fracture injuries. The accused took the victim into a room, attempted to disrobe him, touched his genitals, and inserted a finger into the victim's anus. Additionally, the applicant silenced the victim by forcefully stuffing powder in his mouth. The nature of the power is yet to be ascertained. The offence is serious, and the applicant's custodial interrogation is necessary.

5. It is a settled principle in law that the power to grant anticipatory bail application is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same cannot be said for anticipatory bail. The decision to grant anticipatory bail should be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. When exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder investigation by allowing tampering or destruction of evidence. All these aspects are highlighted in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

6. Upon perusing the record, it appears that there are multiple injuries on the victim's body. Eyewitnesses observed the applicant assaulting the victim. In a statement recorded under Section 164

1 2024 SCC OnLine SC 282.

CrPC, the victim specifically named the applicant and narrated the allegations in detail. Given that the victim is a minor, this traumatic experience could significantly impact his adolescent years, leaving irreversible and irreparable memories. Considering the fact that the investigation is at a nascent stage and the allegations are grave, the applicant, who is mature, does not qualify for pre-arrest bail. There is every likelihood that, at this stage of the investigation, the applicant may pressurise the prosecution witnesses and tamper with the evidence. Given these circumstances, the learned APP is justified in contending that this is not an appropriate case for granting anticipatory bail, and the custodial interrogation of the applicant is necessary.

7. In view of the above, the application stands rejected.

(R.N. Laddha, J.)