

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

Anticipatory Bail Application No.1823 of 2024

Vishwas Yuvaraj Gaikwad

Aged about 27 years, Occ. Service,

R/at. Room No.114, Shastri Nagar,

Near Western Express Highway,

Vile Parle (E), Mumbai – 400 099.

..Applicant.

Vs.

The State of Maharashtra

(At the instance of Sr. Inspector of

Police, Vile Parle Police Station,

Santacruz (West), Mumbai – 99

Through Public Prosecutor.

..Respondent.

Mr. Abhishek Mishra, for the Applicant (through VC).

Ms. Pallavi Dabholkar, APP for the Respondent – State.

PSI Vijay Avati, Vile Parle Police Station present.

Coram : R.N.Laddha, J.

Date : 4 July 2024.

P.C. :

By the present application, the applicant seeks pre-arrest bail in connection with CR No.486 of 2024, registered at Vile Parle Police Station, Mumbai, for offences punishable under Sections 326, 324, 504 read with 34 of the Indian Penal Code.

2. The prosecution alleges that on the night of 27 May 2024,

the applicant intercepted the informant and demanded cash in exchange for an online money transfer. When the informant refused, the applicant began abusing him. Later, the verbal fight escalated, leading to the applicant assaulting the informant. The applicant's patrons also started attacking the informant. The situation aggravated with the applicant assaulting the informant with a bike helmet on his head, causing the informant's eardrum to bleed and rupture.

3. Mr Abhishek Mishra, the learned Counsel appearing on behalf of the applicant, submits that the applicant has been falsely implicated in the present crime as in the FIR, unknown persons assaulted the informant; however, the informant named the applicant in his statement, which was belatedly recorded. He points out that the alleged incident occurred on 27 May 2024 while the informant lodged the FIR after four days, i.e., on 1 June 2024. The learned Counsel argues that it is difficult to believe that the purportedly injured informant resumed day-to-day activities. Mr Mishra, the learned Counsel, contends that the applicant did not participate in the alleged scuffle, and nothing is to be recovered from him. The applicant is ready to cooperate with the investigation. In these circumstances, the custodial interrogation of the applicant is not necessary.

4. Conversely, Ms Pallavi Dabholkar, the learned Additional

Public Prosecutor representing the respondent/ State, submits that the applicant has actively participated in the crime. A CCTV camera identified the applicant. The informant's description of the applicant corroborates with the CCTV camera footage. The learned APP relies upon the injury certificate to show the severe damage to the informant's eardrums from the helmet's blow. The weapon, i.e., the helmet, is yet to be recovered, necessitating the applicant's custody.

5. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

6. Further, the Hon'ble Supreme Court in *Ashok Kumar Vs.*

1 2024 SCC OnLine SC 282.

State of Union Territory Chandigarh² observed as follows:

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

7. After reviewing the records, it appears that on the day of the incident, the applicant verbally abused the informant and subsequently physically assaulted him using a bike helmet. The force of the blow was so severe that it caused damage to the informant's eardrums, resulting in bleeding and necessitating surgical intervention. Due to excruciating pain, the informant could not file a complaint against the applicant on the same day and on 28.05.2024. Additionally, due to election duty commitments, the informant couldn't report the incident to the police until May 29, 2024. Meanwhile, the informant sought medical treatment, and surgery was recommended. The statement of the eyewitnesses, coupled with the injury certificate and the

2 SLP (Cri.) No.9949 of 2023 dated 1 March 2024

CCTV footage, implicates the applicant in the crime. As the investigation is in progress, and the weapon, the bike helmet, remains to be recovered, the custodial interrogation of the applicant is deemed necessary. Consequently, the present application stands rejected.

[RN Laddha, J.]