

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

Anticipatory Bail Application No. 1899 of 2024

Niazamuddin Haji Mohammed

Sayyaed @ Anjum

Aged about 45 years, Occ. Driver,

Both of Mumbai, adult, Indian

Inhabitants, Having address at

Room No.204, Building No.KT-5,

Cheddha Nagar, Rajan City, PWD

Ground, Government Colony,

Chembur, Mumbai – 400 089.

... Applicant

Vs.

1. The State of Maharashtra

Through Inspector Incharge,

Tilak Nagar Police Station, Mumbai

to be served through Public Prosecutor

High Court, Bombay.

... Respondent

2. Akshay Ankush Chavhan

Having address at Room No.10,

Sainath Chowk, Takiya Ward, Kurla West,

Mumbai – 400 070.

... Respondent/
Orig. Complainant

Mr. Sanket Thorat and Mr. Sachin Suware i/b. R. R. Varma, for
the Applicant.

Mr. Nitin Patil, APP for the Respondent – State.

Coram: R. N. Laddha, J.

Date: 11 July 2024

P.C.

Heard Mr Sanket Thorat, the learned Counsel appearing for
the applicant and Mr Nitin Patil, the learned Additional Public
Prosecutor representing the respondent/ State.

2. This is an application for pre-arrest bail filed by the applicant, apprehending arrest in CR No.220 of 2022, registered at Tilak Nagar Police Station, Mumbai, for the offences punishable under Sections 307, 326, 324, 143, 147, 148 and 120-B of the Indian Penal Code, and Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951.

3. The prosecution alleges that on 29 March 2023, the applicant and the co-accused following instructions from a builder, assembled unlawful and assaulted the informant and Mahesh Nimbalkar using bamboo, knives, tiles, and sticks. The motive of this attack was to compel them to vacate the premises.

4. Mr Sanket Thorat, the learned Counsel appearing on behalf of the applicant, contends that the applicant is falsely implicated in the present crime and has not been named in the FIR. The charge sheet has been filed, and considering the role attributed to the applicant, he deserves to be granted anticipatory bail. Moreover, the co-accused have already been released on regular bail, and the applicant is ready and willing to abide by the conditions that this Court may impose.

5. On the contrary, Mr Nitin Patil, the learned Additional Public Prosecutor representing the respondent/ State, argues that the offence is serious, and if the applicant is granted anticipatory

bail, there is a risk of tampering with the prosecution evidence. While the charge sheet has been filed against the co-accused, the right to file a charge sheet against the applicant is reserved. The weapon used by the applicant in the crime has not yet been recovered. Although the applicant was not explicitly named in the FIR, the investigation revealed his active participation in the crime. The learned APP emphasises that the incident was captured on a CCTV camera, providing clear evidence of the applicant's active involvement in the crime.

6. 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

1 2024 SCC OnLine SC 282.

7. The Hon'ble Supreme Court in *Ashok Kumar Vs State of Union Territory Chandigarh*² 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.”

8. After reviewing the records, it appears that the applicant was captured on a CCTV camera during the incident. Eye witnesses also corroborate his involvement. The weapon allegedly used by the applicant has not yet been recovered. *Prima facie*, there is sufficient material to indicate the applicant's involvement in the crime. Notably, the Sessions Court rejected the applicant's anticipatory bail approximately a year ago, and the applicant did not make himself available for investigation until the filing of the present anticipatory bail application on 2 July 2024. Additionally, the applicant has criminal antecedents. In these circumstances, custodial interrogation of the applicant would be necessary.

9. In light of the foregoing, the application stands rejected.

(R. N. Laddha, J.)

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