

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Anticipatory Bail Application No.2085 of 2024**

Deepak Baliram Yadav
Aged about 26 years,
Occupation: Service,
presently residing at
Room No.143/648,
Shri Mahalaxmi Chawl,
Waghoba Nagar, Kalwa (E),
District-Thane-400605

...Applicant

v/s.

1. State of Maharashtra
through the office of
Public Prosecutor,
PWD Building,
Bombay High Court
at Mumbai

2. The Senior Inspector of Police,
(At the instance of "Kalwa
Police Station" District-Thane).

...Respondents

Mr SR Gupta, for the Applicant.

Mr Yogesh Y Dabake, APP, for Respondent/ State.

API Dattatraya Yadav, Kalwa Police Station, Thane City, is present.

**Coram: R.N. Laddha, J.
Date: 29 July 2024**

P.C. :

Heard Mr SR Gupta, the learned Counsel for the applicant and
Mr Yogesh Dabake, the learned Additional Public Prosecutor

representing the respondent/ State.

2. This is an application filed by the applicant seeking pre-arrest bail in connection with CR No.694 of 2024, registered at Kalwa Police Station, Thane, for the offences punishable under Sections 307, 326, 324, 323, 504, 506(2), 143, 144, 147, 148 read with 149 of the Indian Penal Code, and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

3. The prosecution alleges that the applicant, along with co-accused, formed an unlawful assembly and assaulted the informant and his friend, Sahil, by an iron rod, knife, bamboo sticks, etc.

4. Mr SR Gupta, the learned Counsel appearing on behalf of the applicant, submits that the applicant is not named in the FIR. The co-accused have already been released on regular bail. There is no material on record to suggest that the applicant assaulted the informant and the witness. The applicant is willing to cooperate with the ongoing investigation.

5. On the other hand, Mr Yogesh Dabake, the learned Additional Public Prosecutor representing the respondent/ State, contends that the investigation is in progress. The weapon used in the crime by the applicant has not yet been recovered, and that taking the applicant into custody is essential for further investigation. The statements of the eye-

witnesses clearly demonstrate the applicant's involvement in the crime, and the intention to commit the offence is evident from the available material.

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

7. Upon perusal of the records, it appears that the applicant is accused of assaulting the informant and the witness with a bamboo stick. This incident was captured on CCTV camera. There are eye-

¹ 2024 SCC OnLine SC 282.

witnesses to the incident. The injuries sustained by the informant are grievous. The applicant has been attributed a specific role and the weapon used in the crime has not yet been recovered. Furthermore, out of eleven, while three co-accused have been enlarged on regular bail, eight co-accused are yet to be arrested. Considering the gravity of the allegations, the learned APP's contention that this is not a fit case for granting anticipatory bail is justified.

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

(R.N. Laddha, J.)