

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

Anticipatory Bail Application No.2086 of 2024

Divakar Baliram Yadav

Aged about 23 years,

Occupation: Student,

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 MG Patil, APP, for Respondent State.

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

Coram: R.N. Laddha, J

Date: 29 July 2024

P.C. :

Heard Mr SR Gupta, the learned Counsel for the applicant and

Mr MG Patil, the learned Additional Public Prosecutor representing the respondent/ State.

2. This application has been filed by the applicant seeking anticipatory 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, in collusion with the co-accused, assembled unlawfully and physically attacked the informant and his friend, Sahil, using various weapons such as an iron rod, knife, and bamboo sticks.

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

5. On the other hand, Mr MG Patil, the learned Additional Public Prosecutor representing the respondent/ State, argues that the

investigation is in progress. The weapon used in the crime by the applicant has not yet been recovered, necessitating the applicant's custody for further investigation. The statements of the eye-witnesses explicitly demonstrate the applicant's participation 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

1 2024 SCC OnLine SC 282.

7. After reviewing the records, it appears that the applicant stands accused of assaulting both the informant and the witness using a bamboo stick. The incident was captured on CCTV camera, and there are eye-witnesses, who corroborate the involvement of the applicant in the crime. The injuries suffered by the informant are grievous. A specific role has been attributed to the applicant. The weapon used in the crime has not yet been recovered. Additionally, out of eleven, while three co-accused have been released on regular bail, eight others are still at large. Given the severity of the offence, 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.)