

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2294 OF 2024**

Dhairyasheel Vilas Patare	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Nitin Gaware Patil a/w. Mr. Vipul Dushing and Mr. Shubham Wadne for applicant.

Mr. Balraj B. Kulkarni, APP for respondent-State.

Mr. Rajesh Usgaonkar, API, Kondhwa Police Station, District Pune City.

**CORAM : MANISH PITALE, J.
DATE : 03rd SEPTEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. By this application, the applicant seeks anticipatory bail, as he is apprehending arrest in connection with FIR No.0464 of 2024 dated 25.04.2024 registered at Kondhwa Police Station, District Pune City for offences under Section 323 and 337 read with Section 34 of the Indian Penal Code, 1860 (IPC). Subsequently, offences under Sections 307 and 308 of the IPC were added.

3. The FIR was registered on the basis of the statement of informant claiming that while he was travelling with his cousin i.e. the victim on a two-wheeler, 3 unknown persons confronted them on the road. While they were travelling in four-wheeler, they got down from the vehicle, assaulted the victim and went away. As a consequence, FIR was registered against 3

unknown persons. The police conducted the investigation and submitted the chargesheet on 01.07.2024. In the supplementary statement of the informant, 3 specific persons were named as the accused persons, who had allegedly carried out the assault.

4. It was for the first time on 16.07.2024, when a remand application was moved before the Magistrate, that the name of the applicant cropped up for the first time as an accused. Thereupon, the applicant filed an anticipatory bail application before Sessions Court, which was rejected on 29.07.2024.

5. The learned counsel for the applicant submitted that there is absolutely nothing to link the applicant with the incident in question. As per the investigating authority itself and in terms of the statement recorded during the course of investigation, which were all hearsay statements, there was no reference to the applicant at all as being linked with the incident in question. It was submitted that suddenly, after filing of chargesheet on 16.07.2024, the name of the applicant cropped up. It is not even clear whether the co-accused person has named him. It was submitted that therefore, this Court may allow the present bail application, as the applicant is ready to co-operate with the investigation.

6. The learned APP has opposed the present application. He submitted that appropriate instructions would have to be taken in the matter. It was further submitted that the victim in the present case suffered serious injuries and therefore, this Court may not grant indulgence to the applicant at this stage itself.

7. This Court has perused the material on record. As per the statement of the informant, 3 unknown persons assaulted the victim. The statements recorded during the course of investigation show that the witnesses have also repeated the description of the incident and that too, on hearsay basis. In the supplementary statement of the informant, recorded on 30.04.2024, the names of the 3 accused persons have been specifically mentioned, wherein the name of the applicant does not feature at all. On the basis of the said investigation, the chargesheet was filed on 01.07.2024, wherein again the name of the applicant was not mentioned.

8. It was only on 16.07.2024, in the remand application moved before the Magistrate, that the name of the applicant cropped up for the first time as a wanted accused. There is no material in the chargesheet or thereafter, as to how the applicant was linked with the incident in question. Therefore, there is substance in the contention raised on behalf of the applicant that in such circumstances, the applicant cannot be arrested when, even according to the investigating authority, 3 assailants were identified and apprehended.

9. It is also relevant to note that the only ground on which the Sessions Court has rejected the application of the applicant, is that the custody of the applicant is necessary for the investigating officer to carry out the test identification parade. The aforesaid reasoning of the Sessions Court is in the teeth of Section 437 of the Criminal Procedure Code, 1973 (Cr.P.C.) and corresponding Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). In the said provision of Cr.P.C. as well as corresponding provision of BNSS, it is stipulated that a Court shall not refuse bail to an accused, only on the ground that he is required to be identified by the witnesses during the investigation.

10. In view of the above, this Court is inclined to allow the present application, as the applicant is ready to co-operate with the investigating authority.

11. In view of the above, the application is allowed in the following terms:

- (i) In the event the applicants are arrested in connection with FIR No.0464 of 2024 dated 25.04.2024 registered at Kondhwa Police Station, District Pune City, he shall be released on bail on furnishing PR Bond of ₹ 25,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (ii) the applicant shall remain present before the Investigating Officer as and when the Investigating Officer calls upon him to remain present;
- (iii) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case;
- (iv) The applicant shall co-operate with the investigation and also in the proceedings before the trial court.

12. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

13. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application stands disposed of.

(MANISH PITALE, J)