

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2523 OF 2024**

Shivraj Arvind Pawar	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Rahul Arote for applicant.

Mr. Sagar R. Agarkar, APP for respondent-State.

Mr. Kishor Shivaji Talekar, P.C., Kurduwadi Police Station, District Solapur Rural.

**CORAM : MANISH PITALE, J.
DATE : 24th SEPTEMBER, 2024**

P.C. :

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

2. The applicant is apprehending arrest in connection with FIR No.0417 of 2023 dated 18.07.2023, registered at Kurduwadi Police Station, District Solapur Rural, for offence under Section 436 of the Indian Penal Code, 1860 (IPC). The said offence pertains to mischief by fire or explosive substance with intent to destroy house, etc. It is a non-bailable offence and it provides for imprisonment, which can extend even upto life imprisonment.

3. The statement of the informant when the FIR was registered, was to the effect that some unknown persons had caused fire in his restaurant bearing the name "Gaarwa Hotel". Thereafter, a supplementary statement was recorded levelling specific allegations against the accused persons, including the applicant. The co-accused persons were arrested and both of

them were granted regular bail by the Sessions Court. One of the co-accused persons is the father of the applicant herein.

4. The learned counsel for the applicant submitted that the FIR was registered against unknown persons and there is nothing to link the applicant with the incident in question. The FIR is belated as the incident had taken place on 11.07.2023 and the FIR was registered on 18.07.2023. Specific allegations have been made in the supplementary statement recorded on 23.07.2023, thereby indicating that the informant has cooked up a story in the backdrop of the dispute between the parties. It is submitted that the dispute was monetary in nature, in the backdrop of the restaurant being run by the applicant for certain period of time. It is submitted that the applicant is ready to co-operate with the investigation and hence, this Court may consider allowing the present application.

5. The learned APP submitted that a pendrive is also recovered during the course of investigation, which contains conversations between the applicant and the informant as well as the co-accused i.e. the father of the applicant and the informant. The same indicate the threats given by the applicant and the co-accused person to the informant. On this basis, it is submitted that relief may not be granted.

6. This Court has considered the material on record. There does not appear to be any direct material to link the applicant with the incident in question. The FIR was registered against unknown persons and it is not even claimed by the investigating authority that there are any eye-witnesses, who saw the incident at the date and time of the incident. *Prima facie*, the FIR appears to be registered belatedly, for the reason that the incident took place

on 11.07.2023 and the FIR was registered after 7 days on 18.07.2023.

7. Even in the statement which led to registration of FIR, there is no hint of any allegation against the applicant. It is only in the supplementary statement recorded later on 23.07.2023 that the informant has levelled specific allegations against the applicant. These pertain to alleged threats given by the applicant and his father i.e. the co-accused person on telephone. This is the only material against the applicant so far.

8. Even if the said material is to be accepted for the sake of arguments, the ingredients of the offence under Section 436 of the IPC are not *prima facie* made out against the applicant. The co-accused persons have been already enlarged on regular bail and the applicant has undertaken to co-operate with the investigation. In that light, this Court is inclined to allow the present application.

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

- (i) In the event the applicant is arrested in connection with FIR No.0417 of 2023 dated 18.07.2023, registered at Kurduwadi Police Station, District Solapur Rural, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- 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 on 27.09.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer.
- (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.

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

11. 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.

12. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli