

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

Anticipatory Bail Application No.2572 of 2024

Yash Kalpesh Rajpara

Age: 26 years, Occ: Business,

R/at: Vijay Park,

Mira Bhayandar, Thane

... Applicant/
Orig. Accused

v/s.

The State of Maharashtra

Through Kashmirira Police Station,

(Vide their F.I.R. bearing CR No.I-378/2024) ... Respondent

....

Mr Tejesh Dande, a/w. Ms Rashmi Joshi, for the Applicant.

Ms Supriya Kak, APP, for Respondent State.

PSI Swapnil Belose, Kashmirira Police Station, is present.

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Coram : R.N. Laddha, J.

Date : 19 September 2024

P.C. :

Heard Mr Tejesh Dande, the learned Counsel for the applicant and Ms Supriya Kak, 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.378 of 2024, registered with Kashmirira Police Station, Mumbai, for the offences punishable under Sections 115(2), 118(1), 352 read with 3(5) of the Bhartiya Nyay Sanhita, 2023.

3. The applicant and the co-accused alleged to have assaulted the first informant by means of a wooden stick over a vehicle driving dispute with

the complainant.

4. Mr Tejesh Dande, the learned Counsel appearing on behalf of the applicant, contends that the applicant was not present at the time of the alleged incident, and is not assigned any specific role in the FIR. The applicant has been falsely implicated in this crime. The informant has not sustained any grievous injury as defined under Section 116 of the Bhartiya Nyay Sanhita (BNS), and unless such injury is suffered, the provision of Section 118 would not apply. The learned Counsel further submits that except for Section 118(1)(2) of the BNS, the other sections are bailable. The incident occurred spontaneously without any premeditated intention, and the applicant acted in self defence without any prejudice or ill-intention to harm the informant. The alleged wooden stick is not in the applicant's possession. The applicant has no criminal antecedents and is willing to cooperate with the investigation.

5. On the other hand, Ms Supriya Kak, the learned Additional Public Prosecutor representing respondent/State, submits 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 eyewitnesses explicitly indicate the applicant's involvement in the crime.

6. It is 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 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., 2024 SCC OnLine SC 282.***

7. After reviewing the records, it appears that the applicant is accused of assaulting the informant with a wooden stick. Eyewitnesses have confirmed the applicant's involvement in the crime. The injury certificate shows that the informant sustained fracture injury to his nose. The weapon allegedly used in the crime has not yet been recovered. The investigation is at a nascent stage. The applicant's defence cannot be appreciated at this stage. Considering the severity of offence, the weapon used in the crime is yet to be recovered and the fact that the investigation is ongoing, the learned APP's contention that this is not a fit case for granting anticipatory bail is justified.

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

[R.N. Laddha, J.]