

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

Anticipatory Bail Application No. 2581 of 2024

Mohmad Shahbaz Khan @ Shoyeb

Age 30 years, Occ. Business,

R/at Rajeev Gandhi Nagar,

Netaji Subhash Chandra Bose

Chawl, Opp. Dharavi Bus Depo,

Dharavi, Mumbai – 400 017.

...Applicant

Vs.

The State of Maharashtra

(Dharavi Police Station)

...Respondent

Mr Silvin Kale, for the Applicant.

Ms Supriya Kak, APP for the Respondent / State.

Coram: R. N. Laddha, J.

Date: 24 September 2024

P.C.

Heard Mr Silvin Kale, 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.663 of 2024, registered at Dharavi Police Station, Mumbai, for offences punishable under Sections 109(1), 352 and 3(5) of the Bhartiya Nyaya Sanhita, 2023.

3. The FIR was registered based on a complaint filed by the first informant, Steni Shantkumar Dodhmani. It is alleged that about 15

days before the incident, there was a quarrel between the first informant and the applicant. On July 18, 2024, around 9:00 p.m., the first informant was conversing with his friend, Karan Maitry, in front of the Rajiv Gandhi Sports Club. At that moment, the applicant, accompanied by his brother and two unidentified individuals, approached them and began verbally abusing the first informant. When the first informant confronted the applicant, the applicant instructed his brother to retrieve a sword and kill the first informant. The applicant's brother then struck the first informant from behind with the sword, injuring his right ear and cheek. As the first informant turned around, the applicant's brother attempted another blow aimed at the neck, which the first informant managed to deflect with his hands, resulting in serious injuries. His friend, Karan Maitry, rushed him to the hospital. Subsequently, the first informant lodged a complaint, leading to the registration of the FIR.

4. Ms Silvin Kale, the learned Counsel for the applicant, contends that the assault in question was perpetrated by the applicant's 15-year-old brother, who has already been granted bail by the Juvenile Justice Board. The dispute was solely between his brother and the informant. Contrary to the claims, no sword was used during the incident; the police recovered a steel strip, not a sword. The applicant had no direct involvement in the assault and did not abate the offence in any way. At the time of the alleged

incident, the applicant was at his home and had no involvement in the altercation. Furthermore, the victim was discharged from the hospital after two days, indicating that the injuries were not severe. The applicant was previously charged with an offence in 2015, for which he was acquitted by the Court.

5. Ms Supriya Kak, the learned APP, opposed the prayer for pre-arrest bail and submitted that the applicant is named in the FIR, which details a prior altercation between the applicant and the first informant. The FIR attributes a specific role to the applicant, indicating that the applicant actively participated in causing multiple injuries to the victim and is identified as the main accused. Two other unidentified individuals involved in the incident are still at large. The applicant has criminal antecedents. The applicant handed over a sword to a minor and instructed him to attack the first informant with a clear intent to strike the informant's neck. The intervention of the informant's friend prevented further harm.

6. I have given anxious consideration to the rival submissions canvassed across the bar. Upon perusing the records, particularly the FIR, it appears that few days before the incident, there was a quarrel between the first informant and the applicant and an FIR was registered against the first informant and his brother. The FIR specifically alleges that at the applicant's instigation, his minor brother assaulted the informant with a dangerous weapon. During

the investigation, a long iron strip with a sharp edge was seized, which, although not a sword, appears to be a deadly weapon. The child-in-conflict appears to have assaulted the informant at the behest of the applicant. The offence is serious in nature. The applicant suffered four grievous injuries. There is material to show that the applicant handed over the weapon to the juvenile-in-conflict, who assaulted the informant at his instance. There are eyewitnesses to the incident. The applicant is the only adult accused of the crime. Two other accused are still absconding. As the weapon used in the crime was recovered, custodial interrogation of the applicant is not warranted and cannot be a ground to grant anticipatory bail to the applicant. The applicant has asserted an *alibi* as a defence. However, this claim needs to be thoroughly examined and verified during the trial. The allegations against the applicant are of a serious nature. Additionally, two unidentified assailants involved in the case have not yet been located and apprehended.

7. In *Sumitha Pradeep Vs. Arun Kumar C.K. and Ors.*,¹ it was ***held that:***

“..... in many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and , therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone

1 AIR 2022 SC 5705.

would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the Court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

8. In ***Deepak Yadav V/s. State of UP & Ors.***², it was held that :

“There is certainly no straitjacket formula which exist for courts to assess an application for grant or rejection of bail but the determination of whether case is fit for grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of punishment and a prima facie view of the involvement of the accused are important.”

9. 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

² AIR 2022 SC 2514.

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. There is no one-size-fits-all approach. 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.*³.

10. Having considered the aforesaid facts, gravity and seriousness of the offence, in juxtaposition with the judgments referred to above, this Court is not inclined to exercise its discretion in favour of the applicant. Accordingly, the application stands rejected.

11. It is, however, clarified that observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

[R. N. Laddha, J.]

3 2024 SCC OnLine SC 282.