

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

Anticipatory Bail Application No. 2914 of 2024

Milind Natha Thakre,
Aged about 35 years,
Occupation: Business,
Residing at Room No.957, Davdi Road,
Near Regency Church, Village Davdi,
Dombivali (E), Tal. Kalyan, Dist. Thane

... Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Manpada Police Station, Dombivali.

... Respondent

Mr Ishwar Charlewar, for the applicant.
Mr MG Patil, APP, for the respondent/ State.
API Nagesh Bansode, Manpada Police Station, is present.

**Coram: R.N. Laddha, J.
Date: 21 November 2024.**

P.C.:

Heard Mr Ishwar Charlewar, the learned Counsel appearing on behalf of the applicant, Mr MG Patil, 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.1059 of 2024, registered at Manpada Police Station, Dombivali, for the offences punishable under Sections 352, 351(2), 115(2), 109 of

Bhartiya Nyay Sanhita, 2023.

3. The prosecution alleges that the applicant intentionally struck the informant with his Wagon R car and then dragged him for a significant distance, with the intent to kill him.

4. Mr Ishwar Charlewar, the learned Counsel for the applicant, submits that the applicant has been falsely implicated in the present crime. A review of the CCTV footage and the statements in the FIR do not substantiate a case under Section 109 of BNS. The informant was discharged from the hospital immediately after receiving primary treatment. The applicant is ready to cooperate with the investigation by reporting to the concerned police station.

5. On the other hand, Mr MG Patil, the learned Additional Public Prosecutor, representing the respondent/State, submits that the applicant attempted to murder the informant by driving his car over him. The applicant struck the victim from behind with his car and dragged him. This allegation is supported by CCTV footage.

6. After perusing the records, it is apparent that the applicant is named in the FIR. The investigating agency has procured CCTV footage of the incident, which *prima facie* depicts striking the informant from behind with his vehicle and

dragging him for a significant distance. This incident takes on a more serious dimension as it occurred immediately after a reported altercation between the applicant and the informant. Under these circumstances, it cannot be inferred that the allegations against the applicant are baseless or fabricated with the sole intent of humiliating or damaging his reputation in society. Moreover, the lack of necessity for the applicant's custody for evidence recovery does not provide adequate justification for granting anticipatory bail. *Prima facie* there is sufficient material available on record to show the applicant's involvement in the crime. The applicant's custodial interrogation is deemed necessary to facilitate a thorough and effective investigation.

7. 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 straitjacket 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 ***Srikant Upadhyay & Ors. v. State of Bihar & Anr.***¹

8. The Hon'ble Supreme Court in ***Ashok Kumar Vs State of Union Territory Chandigarh***² observed as follows:

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

9. In the totality of the circumstances, I am not inclined to accede to the submissions on behalf of the applicant that no offence under Section 109 BNS is prima facie made out. In cases of this nature, the custodial interrogation becomes essential to unearth the facts in all its facets. I am, therefore, not inclined to exercise the discretion in favour of the applicant. Hence, the following order :

The application stands rejected.

[R.N. Laddha, J.]

¹ 2024 SCC OnLine SC 282.

² SLP (Cri.) No.9949 of 2023 dated 1 March 2024