

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3066 OF 2024

1. Kisan Daulat Gade
2. Manoj Bhausahab Dalvi
3. Shantaram B. Dalvi
4. Pranav Rajendra Bhambare
5. Chetan Eknath Thange ... Applicants
Vs.
State of Maharashtra and another ... Respondents

Mr. Ashwin Kapadnis a/w. Mr. Vivek Rane for Applicants.
Ms. Rutuja Ambekar, APP for Respondent-State.
Mr. Z. M. Avhad for Respondent No.2.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 19, 2024

P.C. :

1. Heard Mr. Kapadnis, learned counsel for applicants, Ms. Ambekar, learned APP for respondent-State, as also Mr. Avhad, learned counsel appearing for respondent No.2 (first informant).

2. The learned counsel appearing for the respondent No.2 has tendered an affidavit in reply, which is taken on record.

3. The FIR, in the present case, is registered against 17 accused persons for an incident that allegedly took place on 02.10.2024. As per the grievance of the informant, the accused persons, including the applicants, assaulted the informant, her father and a nephew at the time of the incident. It is also alleged that some of the accused persons pulled her clothes and acted in such a manner that offence under Section 76 of the Bhartiya Nyay Sanhita, 2023 (BNS) has been registered. It pertains to assault or use of criminal force against woman with an intent to

disrobe. In fact, there are other offences also registered in the present case against the accused persons and the applicants are apprehending arrest in connection with the FIR bearing No.0223 of 2024 dated 04.10.2024 registered with Saykheda Police Station, District - Nashik Rural, for offences under Sections 76, 79, 115(2), 126(2), 189(2), 190, 191(2), 192 and 351(3) of the BNS.

4. The learned counsel for the applicants submits that there is a background to the registration of the said FIR. It is brought to the notice of this Court that the brother of the informant had indulged in certain abusive messages in a *WhatsApp* group, resulting in exchange of messages in the said group between the said person and the other members of the group. It is also brought to the notice of this Court that a report of non-cognizable offence (NC) dated 01.10.2024 was registered at the behest of one of the persons, who has been arraigned as an accused herein, against the brother of the informant with regard to the aforesaid abusive behaviour. It is submitted that the informant has roped in 17 persons, who are all members of the *Grampanchayat* in the context of such rivalry and exaggerated allegations have been made. It is further highlighted that in respect of the specific allegation of the clothes of the informant being pulled etc., overt act has been alleged against co-accused persons, while no role in that regard has been attributed to the applicants. It is submitted that general and omnibus allegations have been made against the applicants and since they are ready to co-operate with the investigation, this Court may consider allowing the present application.

5. On the other hand, the learned APP submits that ingredients of the offence are clearly made out from the statement of the informant. Reference is also made to the statement of eye-witness, who has corroborated the description of the incident given by the informant,

although names of accused persons have not been taken by the eye-witness because he was not aware about the same. It is submitted that nonetheless, the fact that the incident took place is made out by the investigation papers and since serious offences under the BNS are registered against the accused persons, no indulgence may be shown to the applicants.

6. The learned counsel appearing for the first informant - respondent No.2 has also vehemently opposed the present application. He submits that since the provisions pertaining to unlawful assembly have been invoked in the present case and the presence of the applicants is clearly stated by the informant, they cannot take advantage of the fact that overt act pertaining to offence under Section 76 of the BNS is alleged against the other co-accused persons. It is submitted that this Court may dismiss the application.

7. This Court has considered the rival submissions in the light of the material on record, as also on perusal of the investigation papers. A perusal of the statement of the informant shows that the names of the applicants have been stated along with those of co-accused persons in a general and omnibus manner. It is generally alleged against the applicants that they were also present when the incident took place. It is to be noted that the specific act relatable to the alleged offence under Section 76 of the BNS is alleged against co-accused persons and not the applicants.

8. It is also relevant to note that while the incident took place on 02.10.2024 at about 9:30 a.m., the FIR came to be registered after two days on 04.10.2024 at about 1:30 p.m. It appears that the informant has roped in large number of accused persons without making specific allegations against the applicants herein.

9. There is substance in the contention raised on behalf of the applicants that the background of registration of the FIR cannot be ignored. On 01.10.2024, one of the co-accused persons caused the aforesaid NC to be registered against the brother of the informant in the backdrop of abusive language used by him in a *WhatsApp* group, of which some of the accused persons were members. A *prima facie* case is made out in their favour and they are ready to co-operate with the investigation.

10. It is to be noted that, other than the offence under Section 76 of the BNS, all the other offences registered against the accused persons are bailable.

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

- A. In the event the applicants are arrested in connection with FIR bearing No.0223 of 2024 dated 04.10.2024 registered with Saykheda Police Station, District - Nashik Rural, they shall be released on bail on furnishing PR Bond of Rs.25,000/- each with one or two sureties each in the like amount;
- B. The applicants shall remain present before the investigating officer on 25.11.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. They shall co-operate with the investigation;
- C. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

12. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of

anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

13. The application is disposed of.

(MANISH PITALE, J.)

Minal Parab