

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

Anticipatory Bail Application No.3292 of 2024

Prakash Nanubhai Patel

Age 65 years, Occ. Consultant,
R/at. 102, Manorath, Plot No.54,
Charkop, Sector 2, Kandivali (W),
Mumbai - 400 067.

... Applicant

versus

1. The State of Maharashtra
(At the instance of Senior Inspector
of Police, Charkop Police Station)
through Public Prosecutor.

2. XYZ
(Through Charkop Police Station)

... Respondents

Mr Bhanudas Jagtap i/b Mr Ashish Jagtap, for the applicant.
Mr Swapnil S Pednekar, APP, for the respondent/ State.
PI Nawnath Gaikawad (IO) a/w PSI Sunil Sonawane, Charkop
Police Station, Mumbai, are present.

Coram: R.N. Laddha, J.
Date: 19 December 2024

P.C.:

By this application, the applicant renews his request for pre-arrest bail in connection with CR No.518 of 2024, registered at Charkop Police Station, Mumbai, for offences

punishable under Sections 64, 65(2) and 74 of the Bharatiya Nyaya Sanhita, 2023, and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act'). Previously, the applicant approached this Court with an identical request vide Anticipatory Bail Application No.2826 of 2024; however, it was withdrawn on 17 October 2024.

2. It is the case of the prosecution that the informant, along with the victim, lived in the security room of the society, where the informant's husband worked as a watchman. On 9 September 2024, around 1:40 p.m., when the informant returned home from work, she noticed the victim to be scared and coughing. On asking, the victim disclosed that under the pretext of gardening, the applicant called her father on the society's terrace and sent him away to bring planters. When the victim was alone, the applicant inappropriately touched her and inserted his genitalia in her mouth. The victim also disclosed about the incident of 7 September 2024, where the applicant inappropriately touched her when she was alone in her house. The office bearers of the society were appraised of these incidents by the informant and her husband, and subsequently, they lodged the present FIR.

3. Mr Bhanudas Jagtap, the learned Counsel appearing on behalf of the applicant, submits that the applicant is innocent and falsely implicated in the crime at the instigation of disgruntled society members. Further, as nothing is to be recovered or discovered, the applicant's custody is unnecessary.

4. Conversely, Mr Swapnil Pednekar, the learned Additional Public Prosecutor representing the respondent/ State, opposing the request for pre-arrest bail, asserts that the offence is serious and involves a minor. The victim's statement and the CCTV footage reveal that the applicant lured the victim with chocolates and sexually exploited her. The investigation is nascent, and if the applicant is granted pre-arrest bail, he may tamper with the evidence or influence the witnesses.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the material placed on record.

6. It is a settled position in law that the principles governing regular bail do not apply to anticipatory bail. Granting pre-arrest bail is an extraordinary power and requires careful consideration of each case's specific circumstances, as granting protection in serious cases could potentially hinder investigation or lead to a miscarriage of justice by allowing

evidence tampering. A profitable reference in this regard can be made to ***Srikant Upadhyay Vs State of Bihar***¹.

7. The principles to be considered for granting anticipatory bail are settled. The Court, *firstly*, must consider the *prima facie* case against the accused; *secondly*, the nature of the offence; and *thirdly*, the severity of its punishment. While relief can be denied on the requirement of custodial interrogation, its non-requirement cannot by itself be the sole ground to grant pre-arrest bail. These aspects are highlighted in ***Sumitha Pradeep v. Arun Kumar C.K.***².

8. It is also well-established that filing a successive application for anticipatory bail is not prohibited. However, for such an application to succeed, the accused must demonstrate that there has been a significant change in circumstances. A mere superficial justification for the change would not suffice to warrant the approval of a second application for pre-arrest bail. Further, the request can be denied summarily if the grounds presented in the previous application are reiterated in the subsequent anticipatory bail application. A profitable reference in this regard can be made to ***GR Ananda Babu Vs State of Tamil Nadu and Anr***³, ***Rani Dudeja Vs State of***

¹ 2024 SCC OnLine SC 282

² 2022 SCC OnLine SC 1529

³ (2021) 16 SCC 725

Haryana⁴, Bhisham Singh Vs State of Haryana⁵, and Imratlal Vishwakarma and Ors Vs State of MP⁶.

9. Reverting to the facts of the present case, a perusal of the witness statements, *prima facie*, reveals that the applicant sexually assaulted the victim, a four-year-old, on two occasions, and in one of these incidents, the applicant was seen with the victim girl alone while entering and exiting the room. *Prima facie*, there is material to show that the victim narrated these incidents to the informant, who, in turn, informed the office bearers of the society two days before lodging the FIR. Despite being aware of these incidents, the society's office bearers failed to report the incident as required under Section 19 of the POCSO Act. Notably, at the relevant time, the applicant was the society's chairman, and the victim's father was working as a watchman in the society. The POCSO Act was enacted to safeguard children from sexual crimes, prioritising the welfare of the child over the interest of the perpetrators. Considering that the victims are minors, the trauma they endure can profoundly affect their adolescent years, leaving them with lasting and irreparable psychological scars. Given that the investigation is at a nascent stage and the possibility of the

⁴ (2017) 13 SCC 555

⁵ 2024 (3) Criminal CC 490

⁶ 1997 (1) Crimes 289

applicant exerting pressure on witnesses or tampering with evidence cannot be ruled out. That apart, in this successive anticipatory bail application, the record does not indicate any substantial change in circumstances that would justify this Court's indulgence in granting pre-arrest bail. Releasing the applicant on pre-arrest bail at this juncture would hinder the course of an effective investigation. In these circumstances, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected.

(R.N. Laddha, J.)