

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3470 OF 2024

1. Dinkar Kisan Gade
2. Vinayak Kisan Gade
3. Dilip Tukaram Bhambare
4. Rajendra Tukaram Bhambare
5. Subhash Madhukar Gade ... Applicants
Vs.
State of Maharashtra and another ... Respondents

Mr. Ashwin R. Kapadnis for Applicants.
Ms. Megha S. Bajoria, APP for Respondent-State.
Mr. Vikas Pandurang Dhakare, API, Saykheda Police Station, Nashik Rural.

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

P.C. :

. Heard Mr. Kapadnis, learned counsel for the applicants and Ms. Bajoria, learned APP for the respondent-State.

2. In this application, the applicants are apprehending arrest in connection with FIR 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 Bharatiya Nyaya Sanhita, 2023 (BNS).

3. The applicants before this Court are 5 of the 17 accused persons, seeking anticipatory bail.

4. At the outset, the learned counsel for the applicants submits that, by an order dated 19.11.2024 passed in Anticipatory Bail Application No.3066 of 2024, this Court granted relief to five co-accused persons.

Thereafter, by order dated 09.12.2024 passed in Anticipatory Bail Application No.3293 of 2024, this Court granted relief of anticipatory bail to seven co-accused persons. In other words, all the co-accused persons, other than the five applicants before this Court have been granted anticipatory bail. It is submitted that although in the said orders itself, this Court has observed that the overt act attributed to these five applicants is different from the overt acts attributed to the remaining co-accused persons, observations made in the said two orders on other aspects of the matter ought to inure to the benefit of the applicants herein also.

5. The informant, in the present case, in her statement which led to registration of the FIR has alleged that, on the date and time of the incident, all the accused persons gathered, abused and also assaulted the informant herself, her father and nephew. A specific allegation was made against the five applicants in this application that during the course of the incident, they pulled the *saree* of the informant and further acted in such a manner that it amounted to using criminal force against her, resulting in certain injuries. On the basis of the aforesaid statement of the informant, the said offences were registered, one of which is an offence under Section 76 of the BNS pertaining to assault or use of criminal force against woman with an intent to disrobe. The said offence prescribes punishment with imprisonment of not less than three years, which may extend to seven years.

6. The learned counsel for the applicant submits that although the statement of the informant does specifically name the five applicants in the context of the aforesaid allegation relevant for the offence under Section 76 of the BNS, the material on record would demonstrate that the informant and her family are having a running feud against some of the accused persons, including the applicants herein in the context of a

piece of property in the village. It is submitted that one of the co-accused persons had purchased the said property from an individual with whom the informant was having a dispute and that, litigation was pending in that regard. It is further submitted that the material on record would show that repeated legal notices sent to some of the accused persons, including one of the applicants herein and his wife, as also reply notices sent in that regard, were in the nature of extending threats to the accused persons in the context of the property dispute. It is submitted that a perusal of the said documents would show that there were threats of involving the accused persons, particularly the applicants herein, in criminal cases in order to defame them.

7. It is also submitted that this Court, in the order dated 09.12.2024, specifically took note of the propensity of the first informant to exaggerate and to cross limits as she had filed an application before the Magistrate in the year 2022 under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) for registering offences even against a Judge of this Court and also a civil judge, against whose orders, she had a grievance. Reference was made to reports of non-cognizable offences (NCs) registered at the behest of some of the accused persons, indicating the repeated actions of the informant and her brother in harassing the accused persons. One of the NCs pertains to abusive language used by the brother of the informant in a *WhatsApp* group in which the accused as well as the said brother of the informant were members.

8. Reference is also made to NC registered at the behest of the wife of applicant No.1 with regard to the manner in which the informant had threatened the couple with dire consequences in the backdrop of the property dispute. After referring to the aforesaid voluminous material, the learned counsel for the applicant submitted that this was clearly a

case of false implication and wild allegations were made only with a view to harass the applicants. He submits that despite the allegation that the incident occurred in full view of public, only two persons have given their statements as eye-witnesses and even they have not named any of the accused persons, much less the applicants before this Court. It is submitted that since the applicants are ready to co-operate with the investigation, this Court may allow the application.

9. On the other hand, the learned APP submits that the role of the present applicants is clearly distinguishable from the co-accused persons, who were granted relief. By referring to the two orders granting relief to the co-accused persons, she submits that the distinction in the role was taken note of by this Court in the said orders and therefore, there is no question of the applicants claiming relief on the principle of parity. Attention of this Court is invited to the statements of the two eye-witnesses to claim that the incident, as described by the informant, had clearly occurred and since she has specifically named the five applicants in respect of their distinct role, no indulgence may be shown to them.

10. Reference is also made to the injury certificates pertaining to the victims, particularly that of the informant to submit that the injuries correlate to the specific allegations made against the applicants herein. On this basis, it is submitted that the application ought to be dismissed, particularly because this is a case of a serious nature against a woman, who has claimed that she was disrobed in public.

11. This Court has considered the rival submissions in the light of the material available on record. A perusal of the earlier orders dated 19.11.2024 and 09.12.2024 passed by this Court, granting relief to the co-accused persons shows that the role of the applicants in this application was found to be distinct from that of the other co-accused persons. A perusal of the statement of the informant shows that, while

she has named all the accused persons in respect of abuses being hurled and the victims being assaulted, only the five applicants in this application have been specifically named with regard to the allegation pertaining to disrobing the informant and thereafter she being touched inappropriately by the said applicants. The allegation is obviously serious and *prima facie*, the ingredients of the offence under Section 76 of the BNS, pertaining to assault or use of criminal force against woman with an intent to disrobe, can be said to be made out.

12. As regards the observations made by this Court in the aforesaid orders granting anticipatory bail to the co-accused persons in respect of the propensity of the first informant to exaggerate and to cross limits, suffice it to say that exaggeration can also pertain to the tendency to rope in as many individuals as possible with regard to the incident in question. Exaggeration can also be in respect of the description of the incident. In the present case, the informant has specifically named only the five applicants in this application with regard to the said allegations pertaining to the offence under Section 76 of the BNS. It is crucial that there are two witnesses, who have stated that they did witness the incident in question. While one of the witnesses has stated that he saw the scuffle between the informant and the victims on the one hand and certain other persons on the other hand, concerning assault on the informant by way of slaps, fists and kicks, the other eye-witness has specifically stated that the *saree* of the informant was pulled and she was disrobed. There is no doubt about the fact that both the eye-witnesses have not named any of the accused persons, but their statements do indicate that the incident occurred as claimed by the informant on 02.10.2024.

13. The learned counsel for the applicants has placed much emphasis on the fact that the said two witnesses are residents of the same village

and therefore, their failure to name the accused persons can be said to be fatal. But, that aspect would be a matter for further investigation or trial. At this stage itself, the statements of the said two witnesses and particularly, the statement of one of the witnesses pertaining to disrobing of the informant cannot be completely brushed aside.

14. In this context, when the injury certificate of the informant is perused, this Court finds that *prima facie* it co-relates with the nature of allegations levelled against the applicants pertaining to the said offence under Section 76 of the BNS. There is a specific injury on the left side of chest of the informant recorded as 'caused by hands'. The aforesaid injury certificate can also not be brushed aside at this stage.

15. In view of the above, this Court is of the opinion that the emphasis placed on there being a property dispute as also allegations and counter-allegations being made by the informant on one hand and the applicants and accused on the other hand, can be said to a double-edged sword, which can cut against the arguments of the applicants also. Therefore, this Court is not inclined to accept the contentions raised on behalf of the applicants.

16. No case is made out for granting anticipatory bail. The application is dismissed. Needless to say, the observations in this order are limited to deciding this application for anticipatory bail. The concerned courts shall not be influenced by the same, if the applicants are required to file regular bail applications, as also any other proceedings.

(MANISH PITALE, J.)