



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 491 OF 2025

Akash s/o Gautam Savant

.. Applicant

VERSUS

The State of Maharashtra & another

.. Respondents

Mr. Mubashirul Abedin Quazi, Advocate for the Applicant.

Mr. R. S. Wani, APP for the State.

CORAM : ADVAIT M. SETHNA, J.

DATE : 26 JUNE 2025.

P. C. :

1. This is an Application for pre-arrest bail filed by the Applicant under the provisions of Section 482 of Bharatiya Nagarik Suraksha Snhita, 2023 (for short '**BNSS**').

2. The proceedings relate to C.R. No. 0024/2025. The First Information Report (for short '**FIR**') was lodged on 14 January 2025 at 19.40 hours by the Bhagyanagar Police Station, Nanded. The date of the alleged incident is stated to be 5 January 2025 to 6 January 2025 from 23.30 hours to 11.30 hours. The Complainant is one Prthamesh Mahendra Puri, aged 18 years. The Applicant is a Police

Constable. The Sections invoked are 118(1), 333, 127(2), 351(3), 3(5) of Bharatiya Nyaya Sanhita, 2023 (for short '**BNS**').

CASE IN FIR :

3. It appears from the FIR that the Complainant lodged complaint on 5 January 2025 at about 8.00 pm. Complainant and his friends went to Malegaon Yatra and they returned at 11.30 pm. After 10 minutes, a door of the Complainant's room was knocked. When the Complainant enquired who was it, he was told Maharashtra Police. Accordingly, he opened the door and one Police Officer in the name of Akash Sawant was at the door of the room of the Complainant. The Complainant was introduced to the Applicant i.e. the Police Constable through one Ritesh Kshirsagar. ("**Ritesh**"). The said Ritesh came to his room and asked the Complainant to accompany him in front of the hostel. There Akash Sawant, a Police Constable was waiting along with one Kshitij Kamble. ("**Kamble**") Applicant Akash Sawant started beating the Complainant with a piece of construction wood and asked the Complainant as to who was accompanying him on the scooty, to which he replied it was a pizza delivery boy. After about 10 minutes, the said Kamble and the Applicant took the Complainant to the nearby King Collection whereby Applicant Akash Sawant beat the Complainant on his leg with a piece of construction wood and brought him back to his room. The Applicant then slapped the Complainant and the accompanying person his room mate named Adarsh Vairagde and threatened to set ablaze Akash Vairagade with petrol. When Adarsh responded that the person on the scooty was a pizza delivery boy the Applicant and the said Kshitij Kamble let him go. After that, Applicant and Kshitij

Kamble took the Complainant to Ashok Nagar water tank on motorcycle. Ritesh was driving he motorcycle on which the Complainant was also present. Thereafter the Complainant was taken back to his room and he was once again beaten by Akash Sawant and Kshitij Kamble. After that on 6 January 2025, between 00.15 and 1.00 hours, two persons i.e. Applicant and Kshitij Kamble took the Complainant to one Nikhil Chonde in Gokul Nagar. There the Applicant and Kshitij Kamble forcibly accused the Complainant of stealing the motorcycle and beat him with a belt. Pursuant to that Akash Sawant and Kashitij Kamble made the Complainant sit on Applicant's motorcycle between 2.00 and 3.00 hours and took him to Asna river on the Pirbuhan road where they took off his shirt and beat him with a neem stick. At around 4.00 am in the morning they brought him back to his room and left him there. Kshitij Kamble was with the Complainant in his room at 10.00 am in the morning. Pursuant to that, Aksh Sawant came to his room with a police man named Barse. The Police asked him whether he had stolen the motorcycle to which the Complainant replied in the negative. After the said police men left on 6 January 2025, at 11.30 pm, the Applicant and Kshitij Kamble along with one Shravan (full name not known) again came back to Complainant's room, stuffed his mouth with a handkerchief and beat him with the police baton on his back, arms and legs. Pursuant to that, Applicant and Kshitij Kamble threatened the Complainant that if he would report to the Police Station, they would kill him. The complainant has stated that he was falsely accused for theft of a motorcycle and a gold chain weighing 5 tolas.

SUBMISSIONS :

4. Mr. Quazi, learned Advocate for the Applicant would first submit that the Applicant is falsely implicated in this crime. The Application states that he is selected as Police Constable in the year 20221 and has been deputed specially for collection of secret information on criminals. He has absolutely no role to play as far as the alleged incident of assault is concerned. He would submit that on the date of the alleged incident, the Applicant was not at the place of the incident but was on duty. He would rely on the attendance register of 6 January 2025 in support of his submissions. According to him, there is no role of this Applicant attributed in the FIR as far as the alleged assault on the Complainant is concerned. He would submit that due to rivalry/enmity, grudge against the Complainant and his family as the Applicant was about to file complaint against him for the alleged theft, he has been falsely implicated in the crime. The Application refers to an order annexed, of the co accused Kshitij Kamble who is stated to be enlarged on bail by an order of 18 January 2025 (signed on 21 January 2025) passed by Ld CJM Nanded. He would submit that after the ad-interim order dated 7 April 2025 was passed, the Applicant has attended Bhagyanagar Police Station, Nanded. He is fully co-operating with the investigation. It was submitted that the Applicant attended the said police station on 19th June 2025 in response to a notice received by him on 17th June 2025. The ingredients of sections in respect of the offences as invoked against the Applicant in the FIR are completely absent qua the Applicant. The Applicant is made a scape goat in this crime. The injuries even if taken as per the FIR are simple in nature. He would also submit that there is an unexplained delay of about 8

days in lodging the FIR. Thus, he would submit that prima facie case for grant of anticipatory bail is made out and there is no requirement of custodial interrogation of the Applicant in the given facts and circumstances.

5. On the other hand, the learned APP Mr.Wani would strongly oppose the Application. He would first submit that the role of the Applicant in inflicting the injuries on the victim/complainant is clearly set out in the FIR. The Complainant aged 18 years has been mercilessly beaten not once but on several occasions by using stick, belt etc. as disclosed in the FIR. The reason for such assault is only attributed to the alleged theft of a motorcycle for which the Complainant sustained such grave injuries. Relying on the case diary/investigation papers, he would submit that there are about 4 eye witnesses who have specifically named the Applicant in their statements which were recorded on different dates. They have personally seen the Applicant who is a Police Constable assaulting the Complainant. The assault was continuous and consistent at recurring intervals. He would refer to the communication dated 1 April 2025 issued by the Bhagyanagar Police Station, Nanded to the Magistrate to issue proclamation under Section 84 of the BNSS as the Applicant was absconding which was issued on 5 April 2025 under Section 84 of the BNSS directing the Applicant to remain present on 22 April 2025, for the offences under Section 118(1), 333, 127(2), 351(3), 3(5) of the BNS. In such circumstances, he would submit that custodial interrogation of the Applicant is warranted and required. His anticipatory bail application ought to be rejected.

FINDINGS :

6. At the very outset, it may be observed that a communication dated 1 April 2025 placed on record by the prosecution is a request for issuance of Proclamation under Section 84 of the BNSS against the said Applicant / accused in connection with the said crime no 24/2025 registered against him at Bhagyanagar Police Station, Nanded. Accordingly, an order of Proclamation under Section 84 of the BNSS was issued by the Magistrate Court No. 5 Nanded, for offences under sections 118(1), 333, 127(2), 351(3), 3 (5) of the BNS directing the Applicant to remain present on 22 April 2025. However, the prosecution would submit that the Applicant in defied and refused to comply with such order. In this context, it is pertinent to refer to the decision of the Supreme Court in case of **Srikant Upadhyay and others vs. State of Bihar and another**¹ where the Supreme Court has categorically held that when a warrant of arrest or proclamation is issued under Section 83 of the Code of Criminal Procedure (for short '**Cr.P.C.**'), such Applicant is not entitled to invoke the extra ordinary power of pre-arrest bail. In fact the Court ought not to even consider such application on merits since such action would be nothing but sort of defying the lawful order of the Court and an attempt to delay the proceedings. A similar view has been taken by the Supreme Court in the case of **Deepak Agrawal vs. Balwan Singh and another**² where the Supreme Court has reiterated that when the warrant of arrest or proclamation is issued the applicant is not entitled to invoke the extra ordinary powers of anticipatory bail which is an exception and not a rule. On such ground alone, considering the conduct of this Applicant who is

1 AIR 2024 Supreme Court 1600

2 Criminal Appeal No. 5456/2024 decided on 18 December 2024.

a Police Constable, who is clearly fleeing from justice and avoiding the due process of law, ought not to be granted any indulgence more particularly by way of exercising extra ordinary remedy under Section 482 of the BNSS. On this ground alone, the Application ought not to be entertained and deserves to be dismissed. What is further shocking with respect to the conduct of the Applicant is that the case diary reveals that the Applicant is under suspension by an order dated 15 January 2025 by the Suptd. of Police Nanded. This material fact is not disclosed by the Applicant in these proceedings despite it being for the same crime in relation to acts of indiscipline, unbecoming of a public servant.

7. Even if the case is considered on merits, the FIR would reveal the clear role of this Applicant who being a police constable has taken law into his hands and mercilessly beaten, harassed and assaulted the 18 year old Complainant, a student studying at the Falcon Boys Hostel Nanded stated to be preparing for the NET examination, not just once but on several occasions on 5th and 6th January 2025. The reason for such assault appears to be that of theft of a motorcycle and a gold chain of 5 tolas, in respect of which there is nothing to corroborate on record. The contention of learned Advocate Mr. Quazi that the Applicant was on duty on the said day and not on the spot of the incident, even assuming so, he ought not to have taken the law in his own hands and acted in a manner alien to law. The Applicant cannot expect the court to conduct a mini trial at this prima facie stage. The testimony of the eye witnesses who have consistently stated that the Applicant was seen inflicting the injuries on the complainant / victim as also disclosed in the FIR, cannot be

completely ignored at this prima facie stage. Going by the case papers/diary and also submitted by the Ld. APP, the motorcycle used by the Applicant and the neem stick used in the commission of the crime are to be recovered. Considering the serious nature of the accusations and the gravity of the offences from the sections invoked in the FIR, which appear to be prima facie applicable, in the given facts and circumstances.

8 Though the injury certificate may refer to the injuries as simple, the manner in which the injuries are inflicted on the Complainant at tender age of 18 years by misusing powers/authority of a police constable creating a situation of lawlessness, cannot be over looked and/or countenanced. At prima facie stage of anticipatory bail, in the given facts and circumstances, the nature of accusation against a public servant as the Applicant shocks the conscience of the Court. As rightly submitted by the learned App the alleged delay in lodging the FIR is prima facie not without justification, considering the age of the victim, who as the record would reveal, was threatened with dire consequences including threat to be killed by the Applicant. The factual matrix would also clearly reveal that here is a person who is not only abusing the process of law but thwarting the investigation by absconding, has left no stone unturned by creating hurdles and deliberately procrastinated the investigation.

9. A prima facie case under the contours of the Supreme Court decision in **Sumitha Pradeep v/s Arun Kumar C.K. and Another³** is clearly made out by the prosecution against the

3(2022) 17 SCC 391

Applicant. Further, to ascertain the truth of the allegations and nature of accusation against the Applicant who has attempted to flee from justice, his custodial interrogation is both necessary and expedient for the purposes of completeness of investigation. For the above reasons, the anticipatory bail application is devoid of merit and deserves to be dismissed by passing the following Order:

ORDER

Anticipatory Bail Application No 491 of 2025 is Rejected.

At this stage, learned Advocate for the Applicant would submit that as the Applicant was protected by an ad interim Order of this Court dated 7 April 2025, the same should continue in favour of the Applicant to enable the Applicant to approach the Supreme Court where vacations are ongoing. Considering such submission, in the interest of justice, the Applicant shall be protected for a period of ten days (10 days) days from the date this Order is available/uploaded.

(ADVAIT M. SETHNA)

JUDGE