

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2842 OF 2024

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Dharmesh Bhuchhda

...Applicant

Vs

State Of Maharashtra And Anr

...Respondents

Mr. Gaurav Bhawnani, Advocate for the Applicant.

Ms. Supriya Kak, APP for the State.

Mr. Ajay Dube a/w. Adv. Gayatri Gupta a/w. Adv. Ankita Upadhayay i/b. Adv. Ashish Dubey & Adv. Madanmohan Mishra, Advocate for Respondent No.2.

Mr. Manik Patil, API Kashigaon Police Station present.

CORAM : RAJESH S. PATIL, J.

DATED : 10 FEBRUARY 2025

P.C.:

1. The present Application is filed by the Applicants under Section 438 of the Code of Criminal Procedure 1973, for anticipatory bail in respect of C.R. No.0168 of 2024, dated 22 June 2024, registered with Kashigaon Police Station, District Mira Bhayandar under Sections 323, 448, 341, 504, 506 and read with Section 34 of the Indian Penal Code, 1860.

2. It is case of the prosecution that the Informant was married to one

Mr. Hanif Kassar was residing in Flat No.203, Grishma Enclave CHSL, Ravi Group, Phase No.4, Mira Road (E), Thane. The said Mr. Hanif died in the year 2021, and after his death, the Informant continued to stay in the said Flat with her three daughters. The present Applicant was staying in a flat in the same building 'Grishma Enclave' on a leave and license basis. The present Applicant claims that he had some of transaction for sale with the first wife of the deceased Mr. Hanif Kassar with regard to Flat No.203. On 21 June 2024, the Applicant accompanied with anti social people including trans-gender, forcefully entered the flat where the Informant was residing. At that time, only the two minor daughters of the Informant were present in the Flat. The Applicant and the persons accompanying him physically assaulted the minor daughters and thrown them outside the said flat. As they dial police for help. The police arrived then the Informant were put back into possession. Thereafter the Informant filed the F.I.R on 22 June 2024.

3. Mr. Bhawnani, The learned Advocate appearing on behalf of the Applicant submits that the Applicant has purchased the subject flat by way of a registered sale deed from the first wife of the deceased Mr. Hanif Kassar. He submits that the owner of the flat, who is the first wife of the Hanif Kassar, accompanied the Applicant, and on that basis, the Applicant entered the said flat and took possession of the said flat.

However, within a few minutes, the police arrived at the subject flat and directed the applicant to accompany them to the police station. On attending the police station, the Applicant, without any force, handed over the possession of the flat to the Informant. According to him, as of date, there is no prejudice caused to the Informant. He further submits that the Applicant will take such steps as advised in according with law. It is also submitted by the learned Advocate for the Applicant that initially, the F.I.R. was registered only for the bailable offences. However, after three days, Section 380 of the Indian Penal and Section 12 fo the POCSO were added. Hence, he submits that as of today, the police custody of the present Applicant is not required.

4. The learned APP submits that the Applicant, in fact, took the law into his hand by forcefully dispossessing two minor daughters of the Informant. He submits that the Applicant, accompanied by a large number of persons, entered the flat and physically assaulted the two minor daughters of the Informant, and an F.I.R. to that effect has been filed against the Applicant.

5. The learned Advocate for Respondent No.2 submits that if not the police, the Applicant would have succeeded in his attempt to drive away the Informant and her family without following the due process of law. She submits that at that time, Applicant was aware that only the two

minor daughters were present in the subject flat. Taking advantage of the situation, the Applicant, along with a large number of people, entered the flat and, by assaulting the minor daughters, succeeded in obtaining the possession of the subject flat. She submits that strict action should be taken against the present Applicant and that the present Anticipatory Bail Application has to be rejected, as police custody of the present Applicant is required.

6. The learned APP submits that there are around seven antecedents against the present Applicant. The statement under Section 161 of the CrPC have been recorded of the two minor daughters, as well as the statement of the truck driver who had accompanied the Applicant on the date of the incident to carry furniture and fixtures of the Informant, have been recorded. The learned APP submits that after the police became aware about the age of the two minor daughters of the Informant, they added the provisions of POCSO Act.

7. It is now a matter of record that the Applicant took law into his hands and entered the subject flat to take possession on the grounds that there is a registered sale deed in his favour executed by the vendor. The Applicant was admittedly staying in the same building on a leave and license basis, where the the subject flat is situated. Hence, there is a

presumption that the Applicant was aware of who was staying in the subject flat. Despite this, the Applicant, with the help of certain anti social elements having criminal backgrounds, entered the subject flat when only the two minor daughters of the Informant were present. Such actions by the Applicant, taking the law into his own hands and assaulting the two minor daughters with force, along with the assistance of certain individuals, are sufficient grounds to reject the present Anticipatory Bail Application. There are various antecedents against the Applicant, as referred by the prosecution :-

Sr. No.	Police Station	F.I.R. No	Sections
1	Kurar Police Station Mumbai	11 of 2008	378, 170, 411 (IPC)
2	Malad Police Station, Mumbai	19 of 2008	124 of the Mumbai Police Act
3	M.H.B Police Station, Mumbai	Filing No.1703675 of 2008	326,323, 504, 34 (IPC)
4	Mira Road Police Station (Rural)	534 of 2009	143, 147, 149, 323, 324, 504, 506 (IPC)
5	Dahisar Police Station Mumbai	016 of 2017	354, 332, 504 (IPC)
6	Dahisar Police Station Mumbai	916 of 2018	323, 324, 504, 34 (IPC)
7	Santa Cruz Police Station	544 of 2024	438, 323, 324, 448, 504, 506, 34 (IPC)

8. The Supreme Court in case of *Sumitha Pradeep V/s. Arun Kumar C.K. & Anr.* reported in (2022) 17 SCC 391 has held in the paragraph No.12. The said paragraph No.12 reads as under :-

“12In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

[Emphasis supplied]

9. According to me, no case is made out by the Applicant. Hence, **the Anticipatory Bail Application is rejected.**

(RAJESH S. PATIL, J.)