



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

ANTICIPATORY BAIL APPLICATION NO. 353 OF 2025

Shailendra Yadav

...Applicant

V/s

The State of Maharashtra

...Respondent

...

Adv. Ravi Dwivedi for the Applicant.

Adv. Ajay S. Patil, APP for the State.

PI. P. S. Pagare, PSI, S. R. Kanadkhedkar, Parksite Police Station.

...

CORAM : RAJESH S. PATIL, J.

DATED : 11th FEBRUARY, 2025

P.C.:

1. The Applicant has filed the present Application under Section 482 of Bharatiya Nagrik Suraksha Sanhita, 2023 for apprehending the arrest of the Applicant in C. R. No. 05 of 2025 registered with Parksite Police Station for the offences punishable under Section 109, 115, 118(1), 118(2), 3(5), 351(2) and 352 of the Bharatiya Nyaya Sanhita, 2023.

2. It is the case of the prosecution that all the accused together abused and physically assaulted to the Informant and his brother with iron rod and by hands and fist. The incident occurred

in the late night when the present Applicant (Accused No. 1) was urinating near the house of elder brother of the Informant. As the elder brother of the Informant objected to such an act, the accused persons started beating him. As they were beating, the nephew of the Informant called upon Informant and informed him that the elder brother is beaten by the accused persons. The Informant arrived at the spot and tried to save his elder brother. However, he was also beaten by all the accused persons. The present accused No. 1 uttered that he will murder elder brother of the Informant and also threatened that he has recently come out on bail, in a murder case, therefore, people are afraid of him. As both the Informant and his elder brother made noise for help, people from locating gathered around. The accused persons threatened all the people who were gathered and summoned that they will face the same consequences which the Informant and his elder brother are facing. Hence, no one interfered. After beating the Informant and his elder brother, all the accused persons left the spot. Only then, the elder brother and the present Informant was taken to hospital. The Informant was in hospital for 13 days. In the meanwhile, an FIR has been lodged.

3. The learned counsel for the Applicant submits that there were total four accused, out of which, two accused have already been arrested and third accused has been absconded. It is submitted that weapon allegedly used in the incident has been recovered. Therefore, there is no point in arresting the present Applicant. The Applicant is ready to co-operate with the Police. Hence, the Applicant be released on Anticipatory Bail.

4. The learned APP submits that the present Applicant was out on bail in murder case and thereafter has committed the present crime. The Informant was in hospital for 13 days, and discharged thereafter. The Applicant has threatened the Informant and his elder brother that he will kill them. Taking into consideration the past criminal record of the Applicant, it will not be proper to grant any Anticipatory Bail because there is high chances that the life of the Informant and his elder brother is at risk.

5. It is the admitted fact that the Applicant was on bail in a murder case, while the present incident occurred. The weapon used by Applicant and by other co- accused, for hitting the Informant and his elder brother are recovered, the same being Iron Rod, Bambu and Iron Pan. The present Applicant has used filthy

language and threatened the Informant and his elder brother that he will kill them and he is already on bail in a murder case and they should be careful about his reputation.

6. It is not disputed that two accused have been arrested and third is absconded. The informant and his elder brother are both rickshaw drivers and come from a poor background. Taking into consideration the fact that the present applicant has a criminal background and is out on bail in a murder case, it is evident that the informant and his brother are always at risk if Anticipatory Bail is granted to the Applicant.

7. The Honble Supreme Court has held in the case of ***Sumitha Pradeep vs. Arun Kumar C.K. & Anr. [(2022) 17 SCC 391]*** and in particular paragraph 12 which reads as under :-

“12. In 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]

8. After going through the FIR and the documents on record, I find no merits in the Anticipatory Bail Application of the Accused. Hence, Anticipatory Bail Application is rejected.

(RAJESH S. PATIL, J.)