



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 821 OF 2025

ATUL BHAGWAN KADAM

..APPLICANT

VS.

STATE OF MAHARASHTRA

..RESPONDENT

Mr. Shekhar Ingawale for applicant.

Ms. Supriya Kak, APP for State.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : MARCH 27, 2025

PRONOUNCED ON: APRIL 1, 2025.

P.C. :

1. This application is filed under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for seeking pre-arrest bail in connection with the First Information Report (FIR) No.595/2024 registered with the Karveer Police Station, Kolhapur, for the offence punishable under Sections 103(1), 333, 352, 189(2), 190, 191(2), 191(3) of the Bhartiya Nyaya Sanhita, 2023.

2. It is the case of the applicant that the applicant has been

arraigned as an accused no.6 in the crime. Initially, the name of the applicant was not mentioned in the complaint on the basis of which an FIR was lodged. The name of the father of the present applicant was mentioned in the FIR. On the date of the incident, the applicant was not present in village Hanumantwadi, he was at Belgaum, Karnataka. The same can be seen from the CCTV footage of toll plaza of Kognoli, Karnataka. The said place is far away from the place of the incident. The present applicant has no concern with the crime. He is ready to cooperate with the investigating agency.

3. The learned APP submits that the deceased on the date of the incident was soliciting alms (jogava), when the present applicant with other accused persons mercilessly beat him. The wife of the deceased is a issueless widow. She lives alone in the village after the death of her husband. Except the present applicant, all other accused are arrested. The charge-sheet has also been filed. The present applicant is shown as an absconding accused in the charge-sheet. The present applicant is absconding from 24/9/2024 and is not ready to cooperate with the police. If the present applicant is released on pre-arrest bail, he is likely to threaten the widow of the deceased and the other witnesses. Due to the fear of the accused persons, none of the villagers were ready to even help the widow of the deceased, in order

to reach at nearby hospital, therefore, the custody of the present applicant will be necessary in order to complete the investigation.

4. I have heard the learned counsel for the applicant and learned APP. With the help of the learned counsel for the parties, I have gone through the statements and supplementary statements of the witnesses.

5. All the accused persons have been arrested except the present applicant who is absconding from 24/9/2024 till date. His pre-arrest bail application has been rejected by the Sessions Court, Kolhapur.

6. The deceased was soliciting alms (jogava), being the month of Shravan. The accused persons came to the house of the deceased and mercilessly beat him. He was dragged outside of the house and even a weapon was used to beat him. The wife of the deceased was so frightened with the incident that after initially pleading with the accused persons to spare her husband, on the fear that even she would be beaten badly by the accused persons, she went inside her house and sat in a corner of the house out of fear. After the accused persons left the site, she brought her husband inside the house and was seeking help in order to approach for medical aid. Because of the fear of the accused persons, nobody was ready to help her. Ultimately,

she reached hospital, where her husband was declared as dead due to injuries.

7. The IO were able to get hold of a CCTV footage from a nearby house where all the accused persons have been seen, which includes the present applicant. The statement of at least eight witnesses have been recorded by the police who have named the accused persons, wherein the name of the present applicant has been mentioned. Even in the supplementary statement of the widow of the deceased the name of the present applicant has been specifically mentioned. According to me, there is enough material before me, at this stage to show the role of present applicant in crime.

8. The crime is of a serious nature where due to mercilessly beating a person has died. The investigation of the crime is still going on. The applicant has managed to abscond from 24/9/2024 till date. The physical presence of the present applicant is necessary for the purpose of interrogation.

9. The Supreme Court in case of *Sumitha Pradeep vs. Arun Kumar C.K. and another*¹ in paragraph 12 has held 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

1 (2022) 17 SCC 391

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)

10. A similar view has been taken by the Supreme Court in the case of the *C.B.I. vs. Anil Sharma*², in paragraph 4 which reads as under:-

“4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders.”

(Emphasis supplied)

11. Considering the law laid down by the Supreme Court in the

2 AIR OnLine 1997 SC 797

above referred judgments and the supplementary statement of the widow of the deceased, the statements of at least nine witnesses and CCTV footage which the police has gathered, where even the present applicant is seen, I am of the view that no case is made out to grant protection to the present applicant. **The anticipatory bail application of the applicant stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)