

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

ANTICIPATORY BAIL APPLICATION NO. 867/2025

MAINUDDIN RASOOL AHMED KHAN	...APPLICANT
VS	
THE STATE OF MAHARASHTRA	...RESPONDENT

...

Adv. Samarth Srikant Karmarkar a/w Shavnak Parulekar i/b Karmarkar & Associates for the Applicant.
 Adv. Anand S. Shalgaonkar, APP for the State.
 API Gholave, Kurar Police Station.

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CORAM : RAJESH S. PATIL, J.
DATED : MARCH 28, 2025

P.C.:

1. This is an application under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for anticipatory bail on apprehension of arrest in connection with C.R. No.76 of 2025 registered with Police Station, Kurar for the offences under Sections 118(2), 115(2), 352, 351(2), 3(5) of Bharatiya Nyaya Sanhita, 2023.

2. Based on the complaint, an FIR is lodged. The role of the present applicant has been specifically mentioned in the FIR.

3. The learned counsel for the applicant submits that the applicant is accused no. 1 in the FIR. As far as the accused no. 2 is concerned, who is the son of the present applicant aged 20 years, was

granted pre-arrest bail by the Sessions Court. As regards the accused nos. 3 and 4 are concerned, they were arrested and thereafter, on their application, they were granted regular bail. He submits that due to the issue of a parking of a two wheeler, there was scuffle between the applicant and the first informant which resulted into bodily offence, pursuant to which, an FIR has been lodged. The present applicant has also lodged a cross FIR. The applicant is in the business of catering. He does not have any kind of criminal antecedent. He is ready to co-operate with the police in investigating the crime, therefore his custody is not at all necessary.

4. The learned APP submits that as far as the cross FIR is concerned, there was only simple hurt to the applicant. In the present FIR, from the medical certificate, it can be gathered that the first informant suffered head injury and there were six stitches on his skull. He was admitted for five days in the hospital and was thereafter discharged. Iron instrument (Padi) which is a kitchen instrument, was used by the present applicant to hit the first informant on his head. He submitted that there were at least six eye witnesses, whose statements have been recorded by the investigating officer. The complaint and the statement recorded of the eye witnesses suggested that the present applicant has used the iron instrument to hit the informant on his head. The injury is of a grievous nature and therefore, the offences punishable

under Sections 118(2), 115(2), 352, 351(2), 3(5) of Bharatiya Nyaya Sanhita, 2023 are attracted. Hence, the pre-arrest bail application of the applicant should not be allowed.

5. I have heard the counsel for both the sides and have gone through the contents of the FIR, so also, I have gone through the photographs, medical certificate and the statements of the six eye witnesses produced by the APP. What can be gathered from the medical certificate and photographs of the first informant is that the first informant was hit by iron instrument on his head, due to which there were six stitches on his skull and he was admitted for five days in the hospital. The six eye witnesses have also stated in their statement that the present applicant became very aggressive on the issue of parking of a bike and has hit by iron instrument on the head of the first informant.

6. After going through the contents of the FIR, I am convinced with the argument made by the APP. Taking into consideration the over all contents of the FIR, medical certificate and the photographs shown to me, the physical presence of the applicant for interrogation is necessary for completion of investigation. Moreover, there is a possibility that the applicant pressurizing and threatening the witnesses and likely to tamper with evidence, if he released on pre-arrest bail.

7. 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 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. 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

1 2022 SCC Online SC 1529

2 AIR OnLine 1997 SC 797

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)

9. Taking into consideration the contents of the FIR, statements of six eye witnesses, medical certificate and considering the law laid down by the Supreme Court in above judgments, according to me, no case is made out to grant protection to the present applicant. **The anticipatory bail application stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)