

ABA 1968/2022

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ORDER

MHCC050065902022



**IN THE COURT OF SESSIONS, AT DINDOSHI  
(BORIVALI DIVISION), GOREGAON, MUMBAI  
ANTICIPATORY BAIL APPLICATION NO. 1968 OF 2022  
C. R. No. 364 of 2022  
(CNR NO.MHCC05-006590-2022)**

**Noman Zamir Vora**

Age – 18 years completed, Occ : Student,  
Residing at : Room No. 1, Babu Chawl,  
Opp. Riku Park, Koknipada, Kurar Village,  
Malad (E), Mumbai – 400 097.

**...Applicant/Accused**

**V/s.**

**The State of Maharashtra**

(Through Kurar Police Station, Mumbai  
C.R.No. 364/2022)

**....Respondent**

Ld. Advocate Mr. Arun Jadhav for the Applicant/Accused.

Ld. APP Mr. Imran Shaikh for The State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE  
SHRI. SHRIKANT Y. BHOSALE  
(C.R.NO.13)**

**DATE : 10<sup>TH</sup> JANUARY, 2023**

**ORDER**

In anticipation of arrest in C. R. No.364/2022 registered with Kurar Police Station for the offences punishable under sections 307,143,147,148,504,506(2)of IPC, r/w section 135 of Bombay Police Act the applicant has made this application for pre-arrest bail.

2. Prosecution vide say Exh. 2 resisted the application.

3. Heard Ld. Advocate Mr. Arun Jadhav for the applicant and Ld. APP Mr. Imran Shaikh for The State.

4. As per the prosecution on 17.04.2022 the informant and his brother were proceeding through their car near Shivshakti Building, Kokani Pada. They found no sufficient place to proceed ahead since the applicant and one Zhakir Vora were selling the water melon by occupying some place, at that time other accused were playing box cricket in parking place. There was some hot exchange between the informant and the accused. Accused Zuber Vora used the abusive word. After about 15 minutes, the informant and his father returned to the spot with a view to settle the matter, since father of the accused was friend of informant's father. However, the accused abused and assaulted the informant and Akibhai Riyaz uncle, applicant Noman Vora hit the head of Akibhai by cricket bat. Co-accused Zamir Vora pelted stone and hit the neck of Akib. Because of the said, Akib became unconscious. At that time, co-accused Zuber gave blow of knife, which hit the right arm of the informant. In the incident, informant sustained injury and other sustained grievous hurt.

5. Out of six accused, three accused secured anticipatory bail and other two were arrested, but subsequently released on regular bail. The applicant had also made an application for anticipatory bail No. 800 of 2022, but it was rejected by this Court. The application for anticipatory bail before the Hon;be High Court has been withdrawn by the applicant and by way of this second application, the applicant is requesting pre-arrest bail.

6. According to Ld. Advocate for the applicant, now the charge-sheet is filed against the co-accused. There is discrepancy

between the story in the FIR and history narrated to the Medical Officer. He further pointed out that, there is also discrepancy between the statement of witnesses regarding use of weapon. As these facts are revealed after filing of charge-sheet, and therefore, the second bail application is maintainable. In support of said contention, reliance is placed on following authorities.

1. *Bebi Devi & Ors. V/s State of Bihar, 2009 Legal Eagle 10001.*
2. *An Application for Anticipatory V/s Unknown 2015 Legal Eagle 10001.*
3. *Vinayak Mahadev Nimhan Vs The State of Maharashtra 2021 Legal Eagle 10004.*
4. *Vijay Subodh Patil Vs. State of Maharashtra, 2022 ( BOMBAY HC) 235.*
5. *Sachin Vasantrao Taware Vs The State of Maharashtra 2022 Legal Eagle 10010.*

7. It is his next contention that, while releasing the co-accused on regular bail, this Court observed that there is doubt about application of Section 307 of I.P.C. It is also argued that even if anticipatory bail is granted, still the Investigation Officer can investigate the matter including seizer of weapon from the applicant. Near about three months have been lapsed and there appears no efforts, on the part of investigation Officer to arrest the applicant, and therefore, the inference has to be drawn that arrest of the applicant is not necessary. Relying on the following authorities, it is submitted that the applicant is entitled for anticipatory bail.

**1. *Simran Asopa V/s The State of Maharashtra***

**2. *Joseph Paul V/s Shelly Dhall W/o. Sanjesh***

8. As against this, Ld .APP vehemently submit that, mere filing of charge-sheet cannot be treated as change in the circumstance. He further pointed out that, the allegations against the applicant is of assault by cricket bat and said is to be recovered and thus, custodial interrogation is necessary. Apart from the said, he submit that, even though there is no recovery or custodial interrogation is not required. Itself is not a ground to grant anticipatory bail. To substantiate his argument reliance this place on the decision between *Virupakshappa Gouda & Anr. 2017 ALL SCR (Cri) 843 in Criminal Appeal No. 601 of 2017, decided on 28th March 2017* and decision between *Criminal Appeal No.1834/2022 @ Petition for Special Leave to Appeal (Cri) No. 7188/2022 V/s Arun Kumar C.K. & Anr., decided on 21/10/2022, 2022 LiveLaw(SC) 870*, in the Supreme Court of India. It is therefore, argued that anticipatory bail cannot be granted to the applicant.

9. After having regards to the facts and circumstances of the case and the arguments advanced by the respective parties firstly it is seen that anticipatory bail application no. 800 of 2022 was rejected by this Court and thereafter, Anticipatory Bail Application No. 1578 of 2022, before The Hon'ble High Court was withdrawn by the applicant. However, it is pertinent to note that in the order the Hon'ble High Court has mentioned that on expressing disinclination the applicant seeks permission to withdraw the application. It indicate that the Hon'ble High Court was about to dismiss the anticipatory bail application, of the present applicant.

10. Now according to applicant there is change in the circumstances and that is the charge-sheet is filed and the discrepancies between the statement of witnesses are revealed. In this connection it is to be seen that the charge-sheet is filed not against the present applicant, but against co-accused only. I have also gone through the so called discrepancies pointed out by the applicant. However, it is seen that in the first information and in the statement of witnesses, it is clearly mentioned that the present applicant Noman Zamir Vora hit the head of injured Akibbhai by means of cricket bat. Thus, so far as role of the present applicant is concerned, there appears no discrepancies.

11. In case between *Bebi Devi & Ors. V/s. State of Bihar (supra)*, The Hon'ble Patna High Court held that filing of two applications at different time and in different situations are maintainable. In that case initially offence was registered under section 307 of the IPC, however, the charge-sheet was filed only under section 504 of the IPC. In An Application for *Anticipatory V/s. Unknown (supra)*, the situation was same. The matter was under section 307 when the bail was rejected, but subsequently charge-sheet was filed under section 326 and other offences under the IPC. The situation in the present case is altogether different and thus, the above citations are not helpful to the applicant.

12. In *Vinayak Mahadev Nimhan V/s. State of Maharashtra (supra)*, the allegation was of commission of offence punishable under section 326 of The IPC. The history narrated before the medical officer was assault by known person. However, in the statement under sections 164 and 161 of Cr.P.C., the witnesses had stated that assailants were not known to them. In the present case the informant and the other witnesses have categorically stated the name of the present

applicant as assailant.

13. The Ld. Advocate has filed deposition of one medical officer in Sessions Case No. 326 of 2019 to substantiate his contention that blunt trauma is not noticeable injury and therefore, the age of the injury can not be ascertained and that blunt trauma can be pretended. Firstly the said deposition is not relevant in the present case for simple reason that said can not be read as evidence in the present case nor it can be used to contradict the witness in the present case. In case between *Sou. Simran W/o Khushal Asopa V/s. The State of Maharashtra (supra)*, the investigation officer had not arrested the accused inspite of rejection of his anticipatory bail application, meanwhile, the accused become pregnant. Thus, on humanitarian ground the second anticipatory bail was granted. The fact in the present case again do not match and thus, this decision is also not helpful. In case between *Joseph Paul V/s. Shelly Dhall W/o. Sanjesh (supra)*, in this case The Hon'ble Bombay High Court held that the parameters which govern the question of maintaining successive bail applications under section 439 of Cr.P.C., will apply with same force to the applications for anticipatory bail under section 438 of Cr.P.C. There appears no dispute about the said ratio. However, whether there is change in circumstances or not to entertain second bail application is depend upon the facts and circumstances of each case.

14. Thus, from the above discussion it is seen that the cited decisions are not helpful to the applicant. Then the fact remains that the first bail application was rejected so also the Hon'ble High Court was about to reject the anticipatory bail application of the present applicant, however, it was withdrawn. The charge-sheet is filed but not against the present applicant. The discrepancies which the applicant

**ABA 1968/2022**

**::7::**

**ORDER**

has pointed out are not so important to consider at this juncture. The applicant has played major role in the incidence and the weapon of assault i.e. cricket bat is yet to be recovered. Considering all these circumstances, the Court is of the view that there is no substantial change in the circumstances to entertain the second anticipatory bail application. So also on merit the Court is not inclined to grant anticipatory bail. In the result the application has to be rejected. Hence, the order.

**ORDER**

**Anticipatory Bail Application No. 1968 of 2022 stands rejected and disposed of.**

**(Dictated and pronounced in presence of Ld. Advocate for Applicant & Ld. APP)**

**Date: 10.01.2023**

**(Shrikant Y. Bhosale)**

The Addl. Sessions Judge  
City Civil & Sessions Court,  
Borivali Division, Dindoshi.

Dictated on	:	10.01.2023
Transcribed on	:	10.01.2023
Checked & corrected on	:	11.01.2023
Signed on	:	16.01.2023
Sent to Dept. on	:	

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 17/01/2023

Time : 11.42 A.M.

UPLOAD DATE AND TIME

Ms. Tejal C. Rane

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

**HHJ S. Y. BHOSALE  
(Court Room No.13)**

Date of Pronouncement of  
JUDGMENT/ORDER

10.01.2023

JUDGMENT/ORDER signed by P.O. on

16.01.2023

JUDGMENT/ORDER uploaded on

17.01.2023