

MHCC020171892022



IN THE COURT OF SESSIONS FOR GREATER BOMBAY AT MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 2811 OF 2022
(CNR NO. MHCC02-017189-2022)
(C.R.NO. 96 OF 2020)

1. Saba Akbar Ali Shaikh @ Anita Upadhyay

Age 39 Years, Occupation: Housewife,
Residing at Savta Pool, Zopda No.331,
Shree Sai Sant Marg, Reay Road Station,
Mazgaon, Mumbai, Maharashtra 400 010.

..Applicant No.1

2. Sujit Vinod Upadhyay

Age 33 Years, Occupation: Service,
Residing at Sayyed Ali Mira Datar Zopadpatti,
Powder Bunder Road, Reay Road,
Darukhana, Mumbai, Maharashtra 400 010.

..Applicant No.2

Versus

State of Maharashtra

Through Sr. P.I. Sewree Police Station

..Respondent

Appearances :-

Ld. Adv. Mr. Sagar Pramod Kumar Batavia for the Applicants.

Ld. Addl.PP. Mrs. Rajlaxmi Bhandari for the State/Respondent.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE,
MRS. MADHURI M. DESHPANDE,
(COURT ROOM NO. 41).**

DATED : 13TH JANUARY, 2023.

ORDER

1. This is an application filed by the applicants under Section 438 of the Code of Criminal Procedure, 1973, praying for releasing

them on anticipatory bail in connection with **C.R.No.96 of 2020** registered with **Sewree** Police Station, Mumbai for the offence punishable under Sections 326, 354, 323, 504, 141 and 149 r/w 34 of the Indian Penal Code 1860.

2. The prosecution story in short is that, the complainant Tausif Makandar lodged report to **Sewree** police station *interalia* contending that present applicants alongwith other accused persons in furtherance of their common intention quarreled with the complainant. On 19/5/2020 when the complainant had gone to Darga Galli, Ray Road, Mumbai for packaging articles of decoration, at that time accused persons Liyakat Ansari, Eliyas Ansari, Tarbej Shaikh were beating Rafiq. The complainant went there and made enquiry with Rafiq about the incident. He informed that he had gone to throw garbage near Saibaba Mandir, therefore, accused persons started beating him. The complainant was giving understanding to accused persons but they also started beating him; abusing him. The accused Liyakat assaulted him by iron rod on his left hand and back. Due to which, he fell down. The accused Liyakat also assaulted and abused to the other persons who intervened in the said incident. The accused Liyakat also abused and pushed to Jaya Gangurde who also intervene in the said incident and thereby outraged her modesty. Complainant was taken to J.J. Hospital. Then he lodged report to the police station and offence punishable under Sections 326, 354, 323, 504, 141 and 149 r/w 34 of the Indian Penal Code 1860 came to be registered against the applicants vide **Crime No.96 of 2020**.

3. The contention of applicants is that, there exist no such requirement of custodial interrogation of them. Recovery in this

particular case has been effectively made at the instance of other accused. The entire investigation in this particular case has been completed. There was delay in adding the name of present applicants in the case. Present applicants are the resident of the local area and whenever required they will be present before the Court. They do not have any criminal antecedents filed against them neither they have been convicted by any of the Court and territory of India. No specific role has been attributed to die but the present applicants. The allegations levelled against them are nothing but general allegations which are vague in law. No clear *prima-facie* case is made out against them. They are ready and willing to abide by any condition which this Court may put. They are ready and willing to co-operate the investigation and willing to attend the police station as and when required. Lastly, they prayed to release them on anticipatory bail.

4. The prosecution has opposed the application by filing Say vide Exh-2 on the grounds that, the applicants are absconding to avoid their arrest since the date of commission of offence. If they are released on anticipatory bail, they will pressurize the complainant and prosecution witnesses and flee away from the Court of justice. If they are released on bail, they will again commit similar type of offences. Hence, it prayed to reject the application

5. Heard Learned Advocate for the applicants and Learned Addl. PP for the State/Respondent. Gone through the record.

6. In view of these facts, following points arise for determination and findings thereon are recorded against each of them, for the reasons stated below:-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applicants are entitled for anticipatory bail ?	Yes.
2.	What order ?	As per final order.

REASONS

Point No. 1 :-

7. On perusal of documentary evidence placed on record by the applicants, it appears that the charge-sheet against accused persons is already filed vide C.C.No.1194/2021. The incident is taken place on 20/5/2020 against accused persons and on 23/5/2020 the other accused persons were added in the said crime. The Injury Certificate of complainant Tausif Makandar reveals that all the injuries shown in the injury certificate are simple in nature. Prosecution in its say has not prayed for custodial interrogation of the applicants for any purpose. The apprehension of the prosecution is only that they can commit similar type of offence and can pressurize the prosecution witnesses. The further apprehension of the prosecution is that, if they are released on anticipatory bail, they will also tamper the prosecution evidence and will flee from the Court of Justice. The apprehension of the prosecution can be taken care of by imposing certain stringent conditions upon the applicants. The interim protection is already granted to the applicants. Hence, Point No. 1 is answered in the affirmative.

8. Considering nature of offence and role played by applicants in the offence, I find it just and proper to release the applicants on anticipatory bail. Hence, I proceed to pass the following order.

ORDER

1. Anticipatory Bail Application No. **2811 of 2022** is allowed.
2. The interim protection granted vide order dated **22/12/2022** to the applicant No.1 **Saba Akbar Ali Shaikh @ Anita Upadhyay** and applicant No.2 **Sujit Vinod Upadhyay** in connection with Crime No. **96 of 2020** registered with **Sewree** Police Station, Mumbai for the offence punishable under Sections **326, 354, 323, 504, 141 and 149 r/w 34** of the Indian Penal Code, 1860 is hereby confirmed on the following conditions :-
 - a) Applicants attend concerned police station as and when called by the Investigating Officer.
 - b) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.
 - c) Applicants shall not leave India without permission of the Court.
 - d) Applicants shall not commit similar type of offence in future.
 - e) Applicants shall furnish their permanent address and temporary address, if any, and their contact details to the concerned Court.
 - f) Applicants shall not change their residential address without prior intimation to the Investigation Officer and to the concerned Court.
 - g) If the applicants disobeyed any of the above condition, the prosecution is at liberty to move the Court for cancellation of anticipatory bail.
3. The Investigating Officer, **Sewree** Police Station, Mumbai is directed to release the applicants on P.R. Bond of Rs. 30,000/- each with one or two solvent surety/sureties in like amount in the event of their arrest in the above said offence.

4. Anticipatory Bail Application No.2811 of 2022 stands disposed of accordingly.



(Mrs. Madhuri M. Deshpande)
Addl.Sessions Judge,
City Civil & Sessions Court,
Gr. Mumbai

13/1/2023

Dictated on : 13/1/2023
Transcribed on : 13/1/2023
Checked & corrected on : 13/1/2023
Signed on : 13/1/2023
Sent to Dept on :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
Upload Date	Upload Time	Name of Stenographer
13/1/2023	3.11 PM.	Mrs. Mrunal S. Pendkhalkar
Name of the Judge (With Court Room No.)		HHJ Mrs. Madhuri M. Deshpande (Court Room No. 41)
Date of Pronouncement of ORDER		13/1/2023
ORDER signed by P.O. on		13/1/2023
ORDER uploaded on		13/1/2023

