

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**906 ANTICIPATORY BAIL APPLICATION
NO.402 OF 2018**

UTKARSHA S/O. VISHWAS GHULE AND ORS.
VERSUS
THE STATE OF MAHARASHTRA

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Mr. K.D.Bade Patil, Advocate for Applicants.
Mr. P.K.Lakhotiya, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.
DATE : 07/12/2018
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ORAL ORDER :

1. The applicants apprehending arrest in connection with the offences punishable u/s 354,324,323,143,147, 148,149,504,506 of I.P.C. registered vide Crime No. 182/2018 with Pathardi police station, District Ahmednagar, preferred this application seeking anticipatory bail for the reasons set out in detail in the application.
2. Heard the learned counsel for applicants and learned A.P.P. for the State. Perused the F.I.R. as well as papers of investigation placed for perusal by learned A.P.P.
3. In brief, it is the contention of learned counsel for applicants that the applicants are falsely implicated in the case at the instance of informant for the reason that in the

month of January, applicant No. 1 had lodged complaint against the informant and five others. On the basis of complaint lodged, the offences u/s 143,147,148,149,323, 324,504,506 of I.P.C. came to be registered vide Crime No. 30/2018 with Pathardi police station, District Ahmednagar. Subsequent to registration of crime, the offence u/s 326 of I.P.C. added during the course of investigation in view of injury sustained by applicant No. 1 found to be grievous in nature. It is submitted that due to registration of offence and prosecution of informant and his colleagues, they were pressurizing applicants to withdraw the case, otherwise they will implicate him in false case. Therefore, applicant No. 1 lodged complaint in respect of threats given by the informant. In complaint lodged on 20/01/2018 by applicant No. 1, has specifically reported that the informant and other accused persons had given threat to implicate him and his family in the false case of Atrocity Act as well as case relating to outraging the modesty of woman. It is submitted that the threat given by the informant and his colleagues got executed by lodging false complaint which leads to registration of aforesaid offences against the applicants. It is submitted that applicant Nos. 1,3 and 4 are students and prosecuting education. Applicant No. 2 is the father of applicant No. 1. It is submitted that except the offence u/s 354 of I.P.C. all other offences are bailable.

4. By referring the allegations made in the F.I.R., learned counsel for applicants submits that even if the allegations made in the F.I.R. are taken to its face value and accepted in its entirety, still it make out no offence

u/s 354 of I.P.C. on the part of applicant. It is submitted that in order to attract the offence u/s 354 of I.P.C., there must be intention on the part of accused to use criminal force or to make assault with intention to outrage the modesty of the woman. To caught hold the hand during course of quarrel can not be termed as an act willfully committed with intention to outrage the modesty of said woman. It is further submitted that complaint came to be lodged on 07/04/2018. Investigation is practically over. Custodial integration of the applicants is not required. There is no evidence to show that the informant or other witnesses has sustained injury in said incident. It is submitted that looking to the age of applicant Nos. 1,3 and 4 and they being students having no track record of indulging into criminal activity, they deserves to be protected u/s 438 of Cr.P.C.

5. On the other hand, learned A.P.P. opposed the application with the contention that the allegations made in the F.I.R. prima facie make out offences registered against them. It is submitted that the version of incident given by the first informant finds due corroboration from the witnesses to the incident whose statements were recorded during the course of investigation. It is submitted that looking to the nature of accusations made against the applicant, if prima facie make out the case for offences registered against them. It is submitted that in case the applicants are granted anticipatory bail, there is every likelihood that they may pressurize the prosecution witnesses and indulge into offence of similar in nature.

6. In order to appreciate the submissions advanced, I have carefully perused the F.I.R. and papers of investigation. Perusal of the F.I.R. lodged at the instance of applicant No. 1 as against the informant and others vide Crime No. 30/2018 on 20/01/2018 and the complaint dated 22/01/2018 made to the Superintendent of Police, I am of the view that possibility of applicants being implicated in false case can not be ruled out. Although the complainant has alleged that in the incident the applicant No. 1 assaulted the informant and his sister Laxmi and his friend Sachin Tathe by means of baseball stick and applicant No. 2 by means of iron rod, still there is no medical certificate on record to support the version. It is surprising to note that though the period of more than six months has lapsed from registration of offence, the Investigating Officer has not collected medical report in respect of injuries sustained by the informant and others. Except the statement of witnesses, there is no other evidence collected by the Investigating Officer to find corroboration to the version of incident given by complainant. On account of previous enmity, lodging of the complaint with exaggeration can not be ruled out under the facts and circumstances of the case. Applicant Nos. 1,3 and 4 are boys in the age group of 18 – 19 years and prosecuting education. Applicant No. 2 is the father of applicant No. 1. They have no past record of indulging into criminal activity. Looking to overall nature of the accusations against the applicants, custodial interrogation of the applicants is not required. Except the offence u/s 354 of I.P.C. all other offences are bailable. During the trial, the Court will have examine in the light of allegation

made the offence u/s 354 of I.P.C. is attracted or not.

7. Thus, considering the case of the applicants in the light of broad parameters laid down for grant of anticipatory bail, I am of the view that case is made out to extend protection to the applicants u/s 438 of Cr.P.C. I am, therefore, inclined to allow the application and pass the following order.

ORDER

[i] The application is allowed.

[ii] The interim bail granted to applicant No. 1 Utkarsha s/o Vishwas Ghule, applicant No. 2 Vishwas s/o Murlidhar Ghule, applicant No. 3 Onkar s/o Pandurang Rathod and applicant No. 4 Kishor @ Navnath Machhhindra Bade on 03/05/2018 is confirmed subject to following conditions.

[a] The applicants shall appear before the Investigating Officer from 10/12/2018 to 13/12/2018 in between 11.00 a.m. to 2.00 p.m. and co-operate in the investigation.

[b] On and after 14/12/2018 till filing of charge sheet the applicants shall appear before the Investigating Officer as and when directed by him.

[c] The applicants shall not indulge into the act amounting to pressurizing and tampering the prosecution witnesses.

[d] The applicants shall not indulge into the act

amounting to commission of offence similar in nature during the pendency of the proceeding against them.

[e] In case of breach of any of the above condition, the anticipatory bail granted to the applicants is liable to be cancelled.

8. It is clarified that the observations made above are made for limited purpose to decide the application and none of the observation made shall be treated as expression of view of this Court as to merit of case of prosecution. So also the observations made shall not be used in any other proceeding including discharge, quashing of proceeding at the instance of the applicant.

9. The application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP/ABA 402.2018