

MHCC050013932021



IN THE COURT OF SESSIONS, BORIVALI DIVISION, DINDOSHI,
GOREGAON, MUMBAI.

ANTICIPATORY BAIL APPLICATION NO.401 OF 2021

(CNR.NO.MHCC05-001393-2021)

IN

C.R. NO.65 OF 2021
(Oshiwara Police Station)

1. **Suresh Bhuramal Saharia**
aged 63 years, Occupation: Chartered
Accountant

2. **Rohan Suresh Saharia**
Age 31 years, Occ: Student,
both residing at 601, Aster CHSL,
Oshiwara, MHADA, New Link Road,
Andheri(West), Mumbai 400 053.

...Applicants

Versus

The State of Maharashtra
At the instance of Oshiwara Police Station)

..Respondents

Ld. Advocate Mr.Shukla for applicants.

APP Ms Chauhan for the State.

Ld.Advocate Mr. T.R. Patel for intervener/Ori. Complainant.

CORAM: HER HONOUR 1st ADDL.

PRINCIPAL JUDGE

SMT.S.S.SAWANT

(C.R.No.1)

DATE : 8th April, 2021.

ORDER

1. Heard Ld. Advocate for applicants, Ld.Advocate for intervener and Ld.A.P.P. for State.

2. Applicants are apprehending their arrest in C.R.No.65 of 2021 dated 27.2.2021 for the offences punishable under Section 354, 509, 504, 506 r/w 34 of I.P.C. Applicants have filed this pre-arrest bail application under Section 438 of Cr.P.C.

3. Perused the application, documents and reply of prosecution.

4. Prosecution case in brief is as follows :

The informant/complainant aged 49 years is working in Excel Reality Infra and Shri Niranjana Pal is her site supervisor. On 12.2.2021, she told Niranjana Pal that one person was harassing their owner by name Lakhmendra Khurana and they should go for giving understanding to that person. Accordingly, at about 4.00 p.m. complainant alongwith Niranjana Pal went to give understanding to that person namely Suresh Saharia at his residence. At that time, Niranjana Pal introduced himself to said Suresh Saharia i.e. present applicant No.1 and they were talking to each other. At that time, the complainant was standing near to them. Meantime, son of Suresh Saharia namely Rohan Suresh Saharia i.e. applicant No.2 came there in drunken condition and started abusing them. He also rushed towards complainant and Niranjana Pal. While the complainant was giving understanding to him, Rohan rushed towards her and started abusing her in filthy language. He rushed on her person and pushed her forcible by

touching her chest. He started beating her. At that time, Suresh Saharia also abused the complainant and Niranjana Pal in filthy language. Thereafter the complainant and Niranjana Pal left the place without resisting them. Thereafter, the complainant lodged FIR on the allegation that, on 12.2.2021 the applicants have abused her, assaulted her and also outraged her modesty by threatening her. Hence, FIR came to be registered against both the applicant Nos.1 and 2.

5. The applicants apprehend their arrest in CR No.65/2021. It is argued on behalf of applicants that applicant No.1 is Chartered Accountant by profession and applicant No.2 is his son. Applicant No.1's firm has been appointed as auditor of one Excel Realty N Infra Ltd. for the financial year 2019-2020 to 2023-2024 and on many occasions, the managing director of the company has threatened the applicant No.1 to file final account report without verification of documents. The marriage of applicant No.2 was fixed on 16.2.2021. There are CCTV installed in the building at various places even outside the door of applicant and there is different time stated in CCTV footage compared to actual timing. There are affidavits of eye-witnesses who are ladies that no such incident as alleged in the FIR has taken place. The entire allegations are false and FIR is lodged with an intention to misuse the law for blackmailing the applicant No.1 to sign final account report for the present financial year without verification of documents. The applicants are totally innocent and had co-operated to the investigation agency by giving proper information and facts of the matter for fair and transparent investigation under Art.21 of the Constitution of India. At present, it seems that the matter is settled in between the applicants and the complainant. Applicants are permanent

residents of Mumbai. They will not flee from the justice and will attend the court proceeding or even office of the investigating officer. The applicants do not have any previous antecedents to their discredit. He will abide by all the terms and conditions imposed by this court. Hence, it is prayed that applicants may be granted anticipatory bail.

6. Prosecution has strongly objected this bail application by filing say at Exh.2 and additional say at Exh.5.

7. Ld.Advocate for intervener has filed affidavit of complainant thereby resisting anticipatory bail application of the applicants at Exh.3.

8. Heard Ld.Advocate for applicants, Ld.Advocate for intervener and Ld.APP for State.

9. Ld.Advocate for the applicants argued that, present applicant No.1 is a Chartered Accountant and applicant No.2 is his son. Applicant No.1's firm namely Gupta & Saharia has been appointed as auditor of one Excel Realty N Infra Ltd. for the financial year 2019-2020 to 2023-2024. It is further argued that, the managing director of the company has threatened applicant No.1 to file final account report without verification of documents. It is further argued that, Mr. Lakhmendra Khurana threatened applicant No.1 to sign balance sheet of March-2020 or give resignation letter or else he should face the consequences. It is argued that applicant No.1 could not resign without providing final account report as per circular of SEBI. The applicant No.1 had asked the managing director of Excel Realty N Infra Ltd. to initiate proceeding of removal of auditor

from their end. However, he did not initiate any proceedings. It is argued that due to dispute between company and applicant No.1, this cross-case has been filed by employee of the company. It is argued that applicants have not committed any offence. They have been falsely implicated in this case. It is further argued that the entire incident has been taken place in the house of applicants and it was the first informant alongwith unknown man accompanied to the house of applicants. It is further argued that, custodial interrogation of the applicants is not required. Applicants are permanent residents of Mumbai. So they will not abscond. They did not have criminal antecedents. Hence, it is prayed that applicants be granted anticipatory bail.

10. Ld.APP and investigating officer have taken strong objection for granting anticipatory bail to the applicants. The Ld.APP submitted that offence U/sec.354 of IPC is serious in nature. Opportunity should be given to the Investigating officer to investigate the offence. In the say given by Investigating officer, it is mentioned that there are 7-8 women employees in the company and applicant No.1 used to touch those employees with bad intention. Mr.Lakhmendra Khurana at many times tried to convince applicant No.1. It is further submitted that applicant No.1 used to demand cash from the company or he would give report and he threatened that he will file false complaint against them. It is further submitted by Ld.APP that, anticipatory bail be rejected.

11. Ld.Advocate for the complainant/intervener has argued that present applicant No.1 is habitual in committing such offences. Other

offence is also registered against him is of the same nature. The offence is serious in nature and for the purpose of investigation, custody of applicants is required. Hence, it is prayed that application be rejected.

12. After considering the submissions of both the sides and documents produced on record, it is clear that offence punishable U/sec. 354, 509, 504, 506 r/w 34 of I.P.C has been registered against the present applicants on 12.2.2021. There is allegation in the FIR that, present applicants had abused the complainant and another witness Naranjan Pal in filthy language and applicants have pushed the complainant forcefully by touching her chest, threatened her and outraged her modesty. The offence was alleged to have been committed at the house of applicants. Present applicants have not denied their presence at the spot. It is the defence of the applicants that due to dispute of applicant No.1 and company false case has been filed against them. It is to be noted that in the report of Investigating officer also there is mention about dispute between applicants and company. The applicants have filed copy of affidavits of relatives of the applicants, however at this stage, those affidavits of relatives cannot be considered. It is to be noted that although witnesses of which applicants have filed affidavits are the close relatives of the applicants. So it appears that they are interested witnesses.

13. Ld.Advocate for the applicants relied on the following authorities:

(i) Anticipatory Bail application(St) No.2748 of 2020, Raviraj Bhagwatiprasad Gutpa V/s State of Maharashtra decided on 9.10.2020

In this authority, Hon'ble Bombay High Court had granted

anticipatory bail to the applicant considering the facts of that case. However, if we took into consideration facts of this judgment and facts of present case, it is clear that facts are different. So in my opinion this judgment is not helpful to the applicants.

(ii) Criminal Misc. Anticipatory Bail Application U/sec.438 Cr.P.C. No.3147 of 2020, Aneel @ Anil V/s State of U.P.

In this authority, anticipatory bail was granted to the applicant.

(iii) 2017 SCC Online Del 11882, Shivali Sharma V.s State and Anr

In this authority, the petitioner had assailed cancellation/setting aside of the impugned order dated 27.4.2017. In this authority, it was laid down that the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice.

I have gone through above mentioned judgement. Facts of the present case are different. Hence, the ratio laid down in this authority is not helpful to the present case.

Ld.Advocate for applicants also produced copy of order passed by CR No.13 in ABA No.436/2021, which is registered against the present applicant No.1. However, this order cannot be considered by this court.

14. In the present case, Investigating officer had expressed possibility that present applicants may threaten the complainant and

witnesses of the prosecution. So also another offence of same nature has been registered against applicant No.1. There might be dispute between applicant No.1 and company, however it cannot be said that, at this preliminary state that due to that dispute only present case is filed against the applicants. Nature of offence U/sec.354 of IPC is of serious. For the purpose of investigation, custodial interrogation of present applicants is required. It is offence against woman, which is serious. It is mentioned in the say of Investigating officer that, applicant No.1 used to call the women employees and used to touch them with bad intention. So also there is mention that applicant No.1 used to threaten the owner of the company and used to demand amount and liquor. So due to above reasons, in my opinion, present applicants are not entitled for anticipatory bail. In the result, I proceed to pass the following order:

ORDER

- 1) **Anticipatory Bail Application No.401 of 2021 is rejected.**
- 2) **Anticipatory Bail Application No.401 of 2021 stands disposed off.**

08/04/2021

(Smt.S.S.Sawant)
1st ADDL. PRINCIPAL JUDGE
SESSIONS COURT,
DINDOSHI, MUMBAI.

Date of dictation	:	08/04/2021
Date of transcription by steno	:	08/04/2021
Put up before P.O. for signature on	:	08/04/2021
Signed on	:	08/04/2021

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
08/4/2021	
UPLOADED ON	Mrs.S.A.Kapare, H.G.STENOGRAPHER
Name of the Judge (with Court Room No.)	HH The 1st A.P.J. Smt.S.S.Sawant C.R.No.1
Date of Pronouncement of Judgment/Order.	08/4/2021
Judgment/Order signed by P.O. on	08/4/2021
Judgment/Order uploaded on	08/4/2021