

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

ANTICIPATORY BAIL APPLICATION NO.763 OF 2021

1. Asif Hamid Kungale,
2. Niyaj Asif Kungale,
3. Taushif Asif Kungale,
4. Musharaf Asif Kungale,
5. Nadim Asif Kungale,
6. Rijwan Rafiuddin Kungale,
7. Irfan Rafiuddin Kungale,
8. Noman Rafiuddin Kungale,
9. Lukaman Rafiuddin Kungale, &
10. Husain Miyan Subhan Kungale. Applicants
Versus
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.585 OF 2021**

1. Akib Asif Kungale @
Aakif Asif Kungly
2. Iftikaar Subhan Kungale, &
3. Kamran Irfan KungaleApplicants
Versus
The State of Maharashtra Respondent

Mr. Yusuf Khan, Advocate a/w. Mohammad Qais, for the
Applicants in both ABAs.

Smt. A.A. Takalkar, APP for the Respondent-State.

Ms. Smita Gaidhani, Advocate i/b. Shekhar Ingawale, for the
Intervenor.

Mr. Santosh Darade, API, Kalyan Taluka Police Station,
Thane Rural is present.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th APRIL, 2021

P.C. :

1. Both these Applications are decided by this common order because they arise out of the same investigation and same offence. The Applicants are hereinafter referred to by their names.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.158/2020 registered at Kalyan Taluka Police Station, District-Thane on 23.3.2020 under Sections 143, 147, 149, 324, 323, 341, 504, 188 of Indian Penal Code and under Section 37(1) and 135 of the Maharashtra Police Act. Subsequently, Section 326 of IPC was added.

3. The FIR is lodged by one Zaid Kungale on 23.3.2020. He has stated that they have an ancestral land at Survey No.30/6 at village Raya, Taluka–Kalyan. There was a

long standing dispute with the informant's cousin and their sons. In that respect a civil suit was pending in Civil Court at Kalyan. There was enmity between the two groups. On 22.3.2020, at about 8:00 p.m., the informant was taking some articles from his old house and was walking towards his new house. At that time, all these Applicants stopped him. They told him to withdraw his case. When the informant refused, they started abusing him. The Applicant Taushif hit him on his left side of face. Applicant Akib gave blows with wooden bamboo on his back, chest and left side. The informant started shouting. His elder brother Zubair came there for his rescue. At that time, the Applicant Iftikaar assaulted him with stump and Applicant Kamran kicked him. The villagers gathered there and rescued the informant. After taking first aid, the informant went to Century Hospital and was admitted. He gave statement to the police and FIR was registered.

4. Heard Shri Yusuf Khan, learned Counsel for the Applicants, Smt. A.A. Takalkar, learned APP for the State and

Ms. Smita Gaidhani, learned Counsel for the Intervenor.

5. Learned Counsel for the Applicants submitted that the FIR is lodged as a counter blast to the FIR lodged by the Applicant Iftikaar about the same incident. He had lodged his own FIR vide C.R. No.163/2020. He submitted that because of their long standing enmity, all the Applicants are needlessly roped in. He submitted that some of the Applicants are senior citizens and, therefore, leniency should be shown to them.

6. He further submitted that the main role is attributed to only four to five Applicants and, therefore, anticipatory bail should not be denied to others who have not caused grievous injuries. He further submitted that at the first instance the victims had gone to a primary health center and there the injuries were not described as grievous injuries. He submitted that only the certificate of a private doctor shows that the victims have suffered grievous injuries. Therefore, there is doubt created about the exact

nature of the injuries. He submitted that Section 326 of IPC is belatedly applied in this case.

7. Learned A.P.P. as well as learned Counsel for the intervenor opposed these applications. Learned A.P.P. relied on the record of the investigation carried out so far to oppose these applications. However, learned A.P.P., on instructions of the investigating officer who is present in the Court fairly submitted that considering the age of the Applicants Musharaf, Rijwan and Irfan and their lesser role, the investigating agency does not intend to arrest them and, therefore, anticipatory bail can be granted to them. However, she opposed the applications of other Applicants.

8. I have considered these submissions. I have also perused the investigation papers produced before me. Apart from the first informant, there are eye witnesses, namely, Mohd.Najir Kungale, Farazin Khalil Kungale, Ujefa Shabbir Kungale and Siman Shabbir Kungale. They have described the incident. There are allegations that the Applicant Asif

instigated Iftekaar and Kamran to assault Zubair. Apart from the Applicants who were ascribed the specific roles of assault on the informant and Zubair, the other Applicants had taken part in the incident and had assaulted the victims with kicks and fist blows.

9. The injury certificate issued by Dr. Jitendra Morankar shows that the informant Zaid has suffered two grievous injuries, the first one was on the eye causing fracture of wall of left orbit and second was fracture of 3rd and 4th ribs. The other victim Zubair had suffered fracture of 6th to 10th ribs. These injuries are quite serious and grievous. All the Applicants were part of the unlawful assembly and, therefore, Section 149 of IPC is applied in this case.

10. Considering the seriousness of the injuries and also taking into account the common object shared by the accused, protection of anticipatory bail cannot be granted to all these Applicants except three Applicants Musharaf, Rijwan and Irfan. Because of their advanced age and lesser

role, the investigating agency does not intend to arrest these three Applicants. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.158/2020 registered with Kalyan Taluka Police Station, District-Thane, the Applicants Musharaf Asif Kungale, Rijwan Rafiuddin Kungale, and Irfan Rafiuddin Kungale, are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The Applications of all other Applicants are rejected.
- (iii) Both Anticipatory Bail Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)