

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

ANTICIPATORY BAIL APPLICATION NO. 1028 OF 2021

1. Sarfaraz Mustaaq Pathan Alias Saif Pathan
2. Mohd. Yawer Qaimyawer Mirza Applicants

Versus

The State of Maharashtra Respondent

Mr. Pankaj Pandey a/w. Smit Nagda for Applicants.
Mr. Ajay Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th APRIL, 2021

P.C. :

1. Applicants are seeking anticipatory bail in connection with C.R.No. 344 of 2020 registered at Mumbra Police Station, Dist. Thane, on 31/03/2020, under sections 143, 147, 148, 188, 323, 326, 506 r/w. 149 of the Indian Penal Code (for short 'IPC').
2. Heard Shri. Pankaj Pandey, learned counsel for the applicants and Shri. Ajay Patil, learned APP for the State.
3. The First Information Report (for short 'F.I.R.') is lodged by one Abrar Sarguru. He has stated that, he is working

with an NGO. He was distributing food grains through his NGO. On 29/03/2020, in the evening, there was some quarrel with one Farukh Kazi, who was residing in the same building as that of the informant. Farukh had slapped him on that occasion. There was some quarrel between them. On 30/03/2020, at about 10:00p.m. when the informant was distributing food grains, 20 to 25 persons came towards him carrying hocky stump and bamboo. Both the applicants were amongst those people. They started beating the informant. The applicant No.1 and Farukh assaulted him with some sharp weapon. One Shanu Pathan gave blows with bamboo on his head. The informant's friend Juned came to his rescue. Juned was also assaulted by the applicant No.1 and one Shanu with kicks and fist blows. The applicant No.1 threatened him and then they went away.

4. Learned counsel for the applicants submitted that the applicants are involved due to political rivalry. Farukh has given cross F.I.R. about the same incident and a true story is mentioned in that F.I.R. There are allegations that the aforementioned Juned had assaulted Farukh with bamboo and somebody had assaulted

him with sharp weapon. Learned counsel, therefore, submitted that, looking at the cross F.I.Rs. it appears that applicants are implicated falsely.

5. Learned APP relied on the investigation papers which contain statements of one Shahnaz Sarguru and Almas Sargutu. Both these statements mention that the applicant No.1 had pushed Shahnaz with his hands and he had deliberately touched her causing outraging her modesty within the meaning of section 354 of IPC. Learned APP submitted that, section 354-B of IPC is also applied in this case. However, from the allegations, it appears that the offence punishable under section 354 of IPC is committed which is a non bailable offence. Learned APP submitted that there are other eye witnesses viz. Aminabi Khan, injured Juned etc. who have supported the case of the first informant.

6. I have considered these submissions and I have perused the injury certificate. The informant Abrar had suffered five injuries. All the injuries were described as simple injuries. There is only one incised wound on his cheek of the dimension 1cm x .5cm x.5cm. It is also described as simple injury. The other

victim Juned had suffered two blunt traumas on his shoulder and nose. They are also described as simple injuries. Thus, section 326 of IPC does not appear to be attracted in this case. The applicant No.2 is also not attributed any particular weapon in the F.I.R. Therefore, applicant No.2's case can be considered favourably for grant of anticipatory bail. However, there are allegations against the applicant No.1 that he had outraged modesty of a lady in that incident. Learned APP submitted that the applicant No.1 has criminal antecedents and as of today he is externed from the area. Considering this aspect and also taking into account that there are allegations of commission of offence punishable under section 354 of IPC against the applicant No.1, his application cannot be granted.

7. Hence, the following order :

ORDER

- (i) Application for Applicant No.1 is rejected.
- (ii) In the event of arrest of Applicant No.2 Mohd. Yawer Qaimyawer Mirza in connection with C.R.No. 344 of 2020 registered at Mumbra

Police Station, Dist. Thane, the applicant No.2 is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (iii) The Applicant No.2 shall attend the concerned Police Station once in a month for a period of one year from today.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)