

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

ANTICIPATORY BAIL APPLICATION NO.1638 OF 2021

Mushtaque Ahmad Mukhtar Applicant

versus

State of Maharashtra Respondent

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- Mr.Salman Khan, Advocate for Applicant.
- Mr.H. J. Dedhia, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd JULY, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.168/2021 registered with Bhiwandi City Police Station, under sections 143, 144, 147, 148, 149, 324, 325, 326, 336, 337, 338, 506, 188, 269, 270 of the Indian Penal Code., under section 51(b) of the Disaster Management Act 2005, under section 11 Maharashtra Covid-19 Regulation 2020, under section 3 of the Epidemic Disease Act, 1897 and under section 37(3), 135 of Maharashtra Police Act, 1951.

2. The FIR is lodged by one Faizal Mohammad Niyaz Momin. He has stated that on 28/05/2021, he was returning home at about 01.30 p.m. He saw that the door of the Masjid was closed, but one Kaif was trying to open it with the iron rod for making entry in Masjid. The informant told him not to open the door as people would rush in. Kaif assaulted him. There was some scuffle between Kaif and the first informant. At about 02.45 p.m. when the informant was sitting near his house, at that time, Kaif, Chhatua, the present Applicant, Saidu Akhtar and 10 to 15 persons mounted assault on the informant and others with sticks, stones, glass bottles etc. In the assault, seven persons suffered injuries. The informant himself suffered injuries and then he lodged his FIR.

3. Heard Mr.Salman Khan, learned counsel for the Applicant and Mr.H. J. Dedhia, learned APP for the State.

4. Learned counsel for the Applicant submitted that the

informant has filed an affidavit which is annexed at annexure 5 of the application, wherein he has stated that the Applicant was not present at the time of incident, though he is arraigned as an accused in the present crime. He submitted that it was by mistake that the Applicant's name was incorporated in the FIR. This affidavit was filed in the Sessions Court at Thane when the Applicant's anticipatory bail application was pending.

5. Learned APP produced injury certificate before me to oppose this application.
6. I have considered these submissions. There are 10 injured persons in this case. Out of them, Firoz Kamrudin Ansari has suffered grievous injury as he has lost his two teeth. Gaus Shaikh has suffered injury on his frontal portion of head. Sajid Shaikh has suffered two injuries one on the forehead and one on the left arm. Gulam Ansari has suffered grievous injury on left side of his head. Thus, there are four persons who had suffered grievous injuries. Most of the injuries are on the vital parts.

Therefore the allegations in the FIR are supported by the medical certificate. The affidavit of first informant is dated 30/06/2021, wherein he has tried to support the Applicant in this case. This affidavit is filed after more than a month. I am not satisfied regarding the truthfulness of this affidavit at this stage, as the informant had not immediately clarified that the Applicant's name was wrongly mentioned in the FIR. The allegations in the FIR are serious. Many people have suffered serious injuries. The incident involves serious attack by 10-15 persons. Therefore investigation in this offence is necessary. Custodial interrogation of the Applicant is also necessary, considering gravity of the offence. No case for grant of anticipatory bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)